

Texas Register

Volume 17, Number 39, May 26, 1992

Pages 3809-3868

In This Issue...

Proposed Sections

State Board of Registration for Professional Engineers

Practice and Procedure

22 TAC §§131.51, 131.54, 131.55, 131.57 3819

22 TAC §131.73 3820

Texas Department of Health

25 TAC §133.21 3820

Texas Workers' Compensation Commission

Practice and Procedure

28 TAC §102.8 3821

Employers

28 TAC §120.2 3821

28 TAC §120.3 3822

Rejected Risk: Injury Prevention Services

28 TAC §§165.1, 165.2, 165.3, 165.4 3822

Comptroller of Public Accounts

Tax Administration

34 TAC §3.405 3824

34 TAC §3.544 3824

34 TAC §3.549 3826

34 TAC §3.551 3830

34 TAC §3.565 3831

34 TAC §3.567 3832

Texas Youth Commission

Admission and Placement

37 TAC §85.3 3832

37 TAC §85.37 3832

General Provisions

37 TAC §93.57, §93.59 3833

Texas Department of Insurance

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L 3833

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- 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- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after proposal publication date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 accumulative quarterly and annual indexes to aid in researching material published.

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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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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, Austin. Material can be found using **Texas Register** indexes, the **Texas Administration Code**, section numbers, or TRD number.

Texas Administrative Code

The **Texas Administrative Code** (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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This program is sponsored by the **Texas Register** to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the **Texas Register**. The blank pages are a result of the production process used to create the **Texas Register**. The artwork does not add additional pages and does not increase the cost of the **Texas Register**.

Texas Register Publications



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Withdrawn Sections

Texas Department of Health
25 TAC §133.21 3835

Adopted Sections

Texas Department of Health

Hospital Licensing
25 TAC §133.21 3837
Comptroller of Public Accounts

Tax Administration
34 TAC §3.7 3842

Texas Youth Commission

Administrative Provisions
37 TAC §81.13 3843

Placement Planning
37 TAC §85.33 3844

Texas Department of Human Services

Community Care for Aged and Disabled
40 TAC §48.2707 3844

Open Meetings

Texas Department of Agriculture 3845
State Bar of Texas 3845

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons 3845

Texas School for the Blind and Visually Impaired 3845

Texas Department of Commerce 3846

Texas Department of Criminal Justice 3846

Texas State Board of Dental Examiners 3847

Texas Education Agency 3847

Texas Commission on Fire Protection 3848

Office of the Governor-Texas Information and Referral Project 3848

Statewide Health Coordinating Council 3848

Texas Department of Housing and Community Affairs 3849

Texas Department of Insurance 3849

Lamar University System 3849
Texas Board of Professional Land Surveying 3849

Public Utility Commission of Texas 3850

Texas National Research Laboratory Commission 3850

Sam Houston Bicentennial Birthday Celebration State Commission 3850

Teacher Retirement System of Texas 3851

Texas Property and Casualty Insurance Guaranty Association 3851

Texas Southern University 3851

Texas State Technical College 3851

Texas Turnpike Authority 3851

University of Texas System M.D. Anderson Cancer Center 3851

Texas Water Commission 3851

Texas Workers' Compensation Insurance Fund 3852

Regional Meetings 3852

In Addition Sections

Texas Air Control Board

Notice of Contested Case Hearing Number 298, Reynolds Metals Company 3855

Texas Bond Review Board

Bi-Weekly Report on the 1992 Allocation of the State Ceiling on Certain Private Activity Bonds 3855

Texas Department of Commerce

Request for Proposal 3856

Texas Economic Development Corporation

Telecommunications Industry Study Request for Proposal 3856

Texas Department of Health

Application for Preventive Health Block Grants 3858

Texas State Library and Archives Commission

Local Government Records Committee 3858

Public Utility Commission of Texas

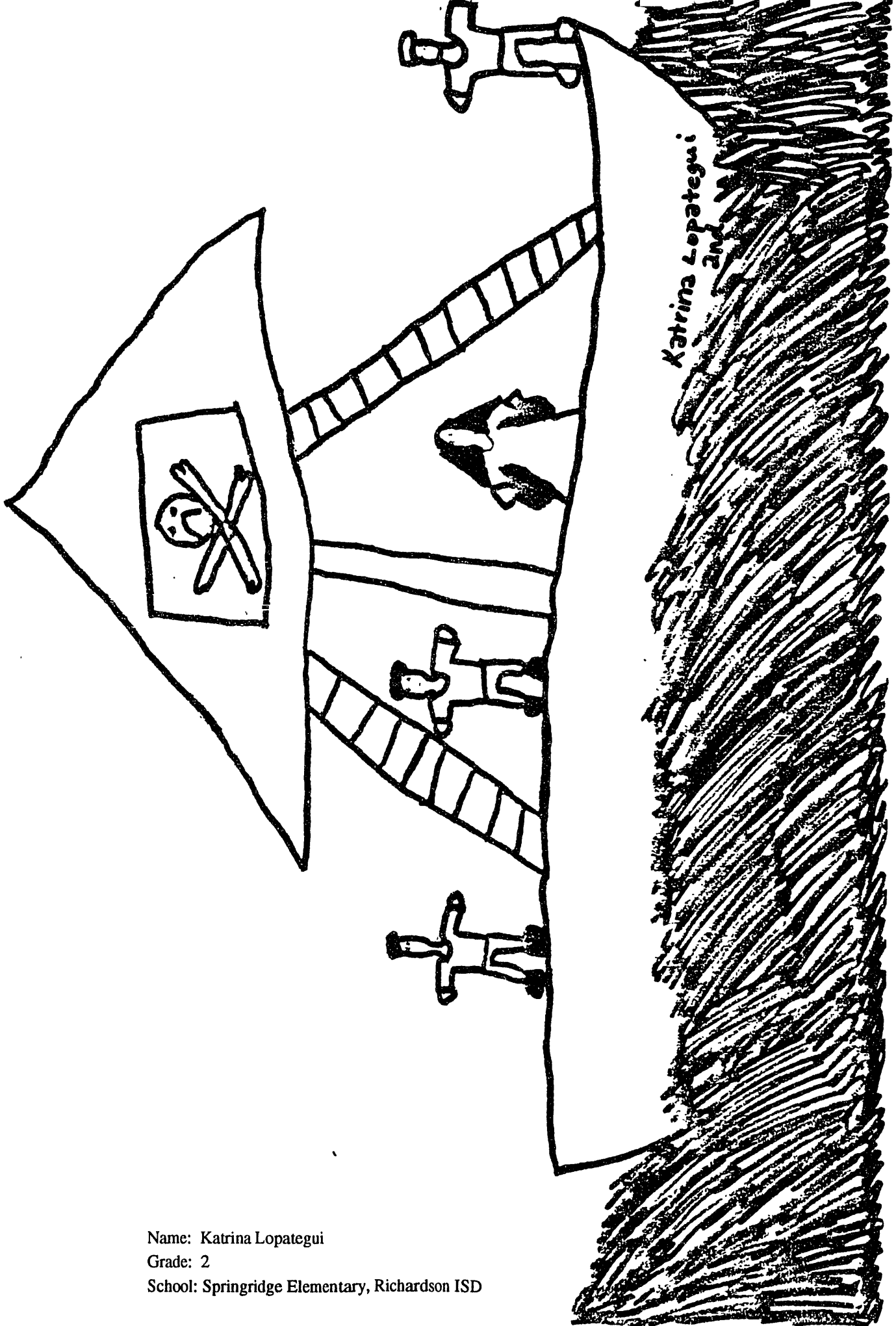
Notice of Intent to File Pursuant to PUC Substantive Rule 23.27 3858

The University of Texas System

Consulting Services-Award of Contract 3859

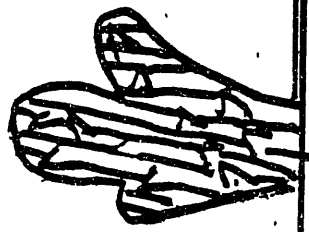
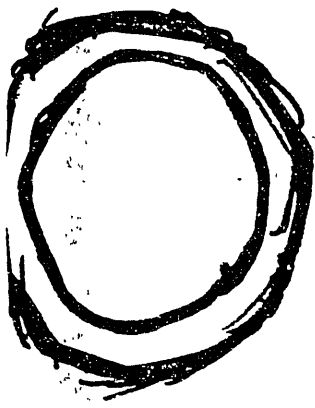
Texas Water Commission

Notice of Application For Waste Disposal Permit.....3859

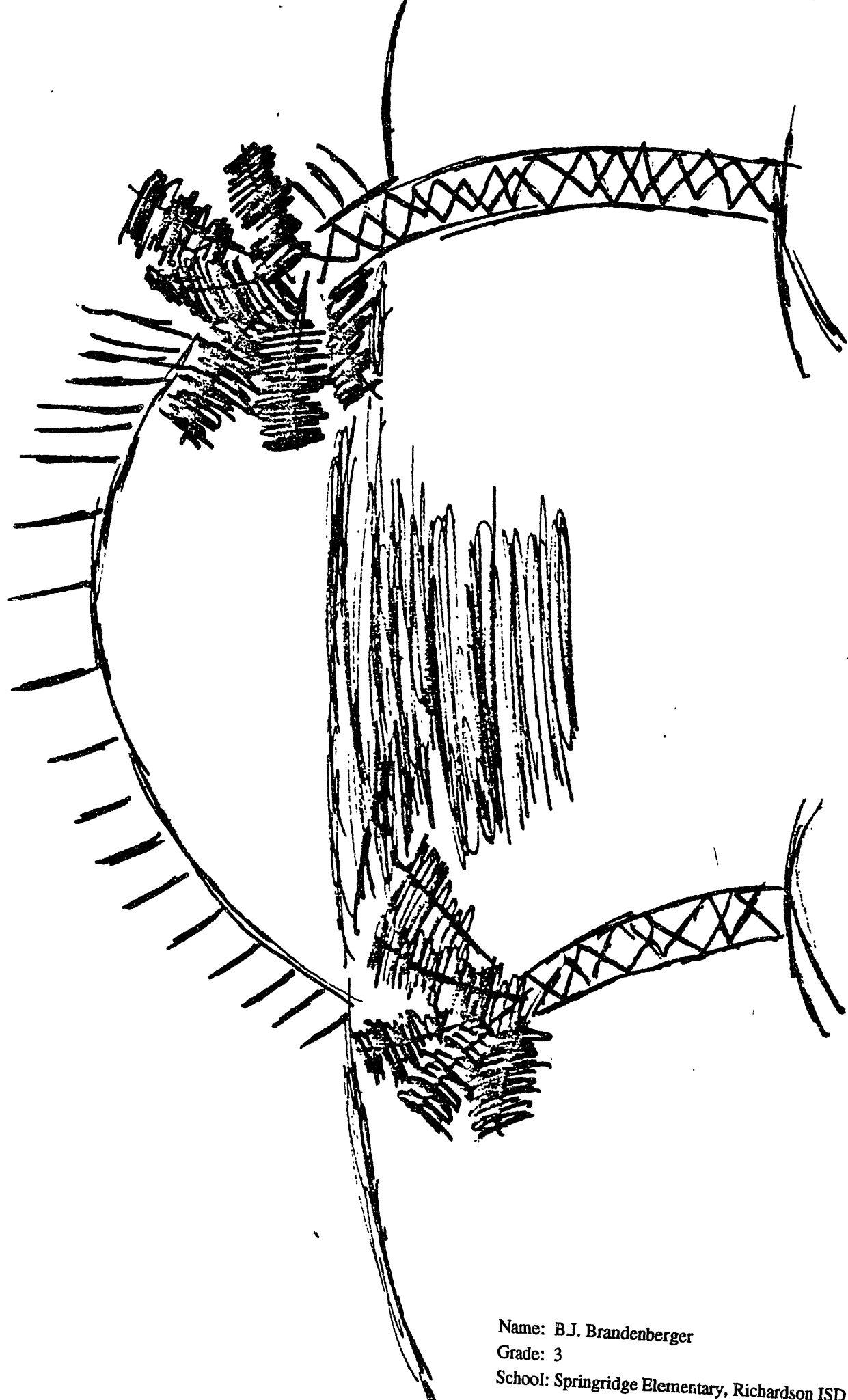


Katrina Lopategui
2nd

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Grade: 2
School: Springridge Elementary, Richardson ISD

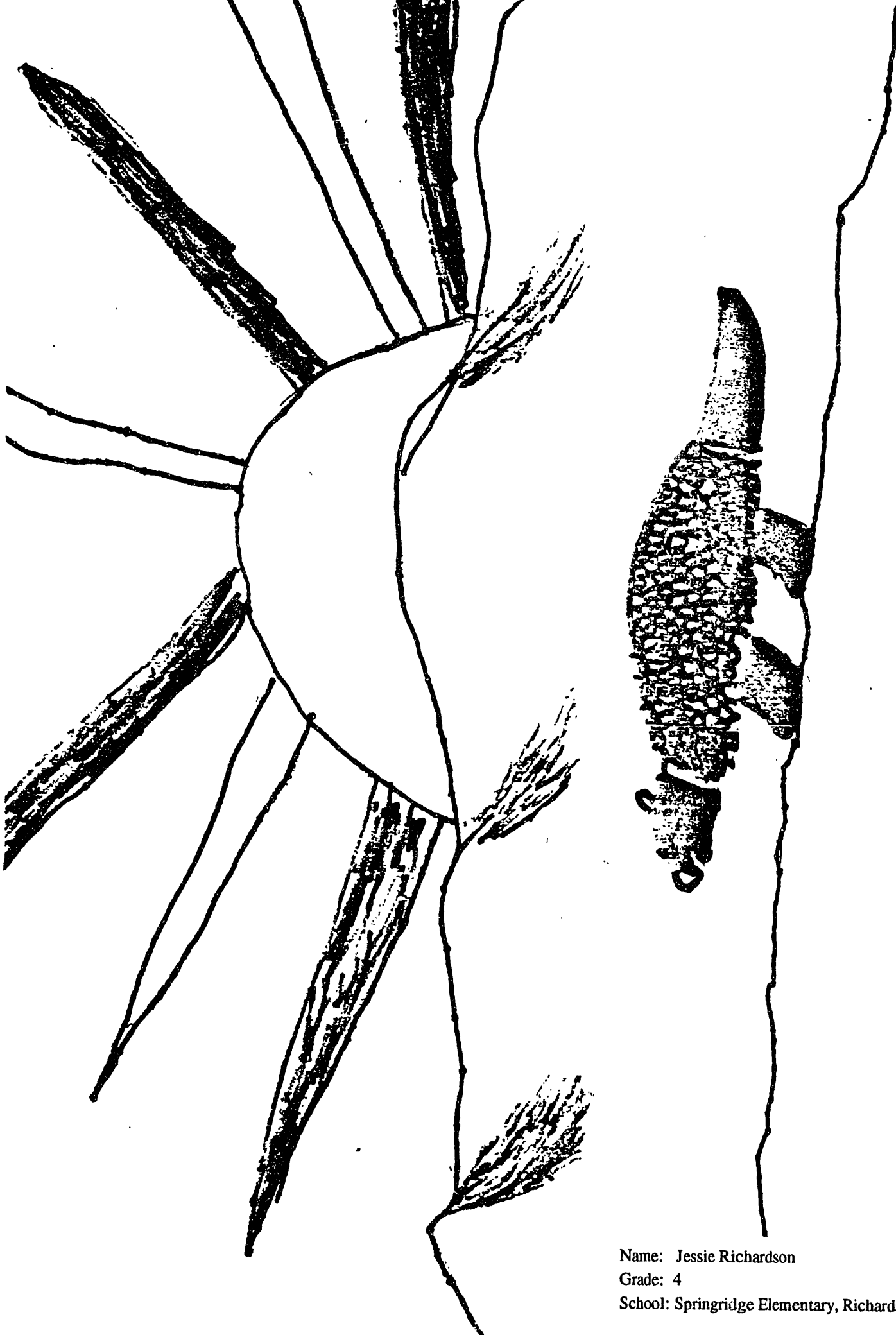


Name: Melanie Veach
Grade: 3
School: Springridge Elementary, Richardson ISD

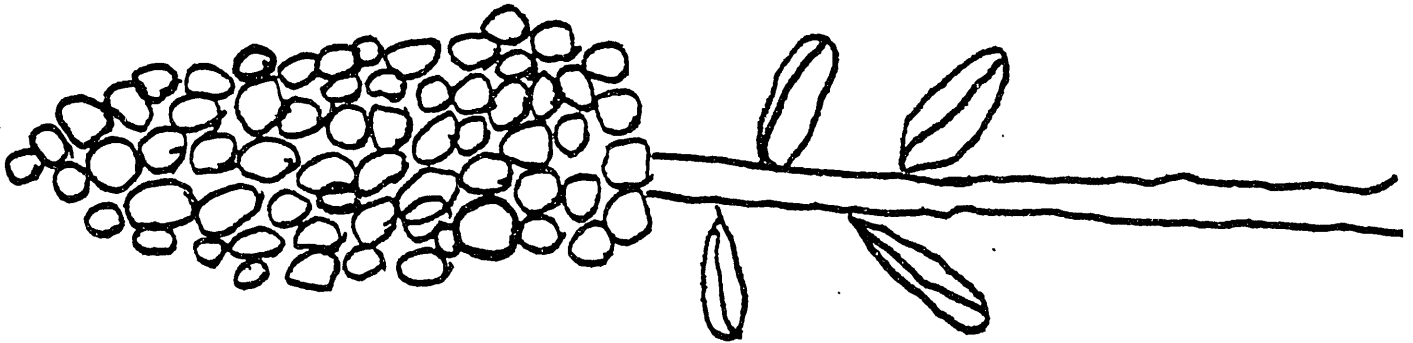
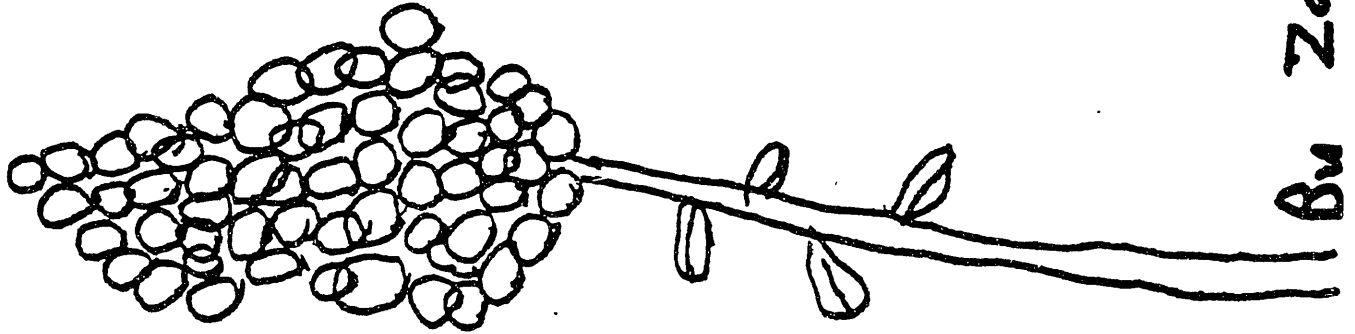
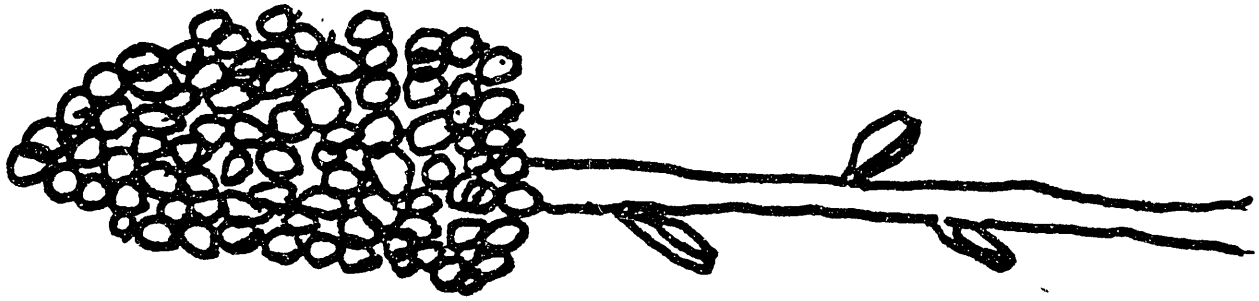


B.J. Brandenberger - 3rd

Name: B.J. Brandenberger
Grade: 3
School: Springridge Elementary, Richardson ISD



Name: Jessie Richardson
Grade: 4
School: Springridge Elementary, Richardson ISD

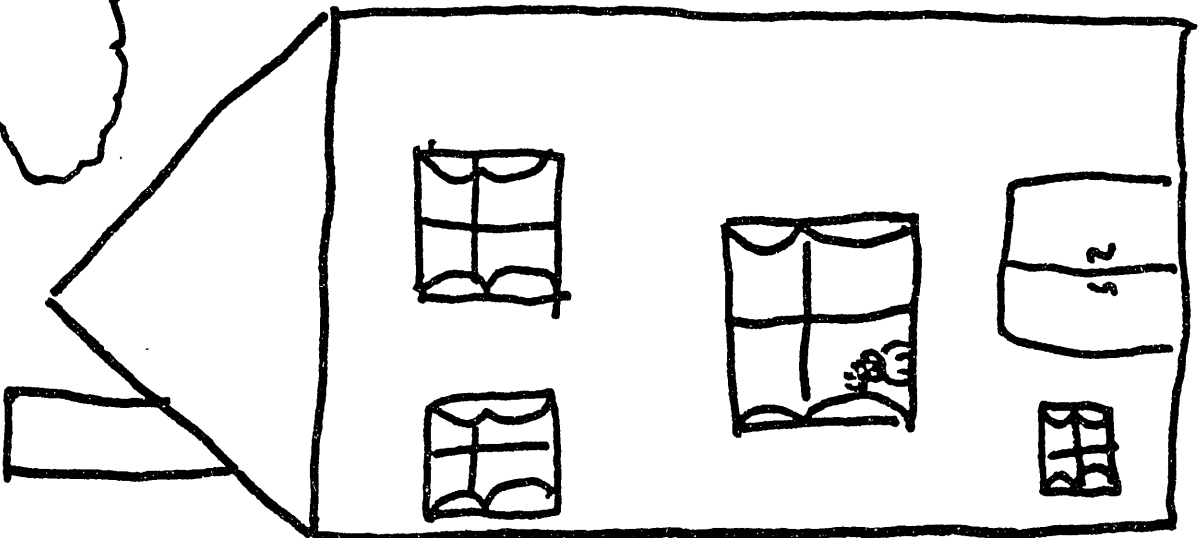
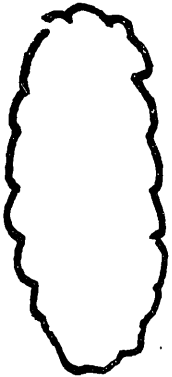
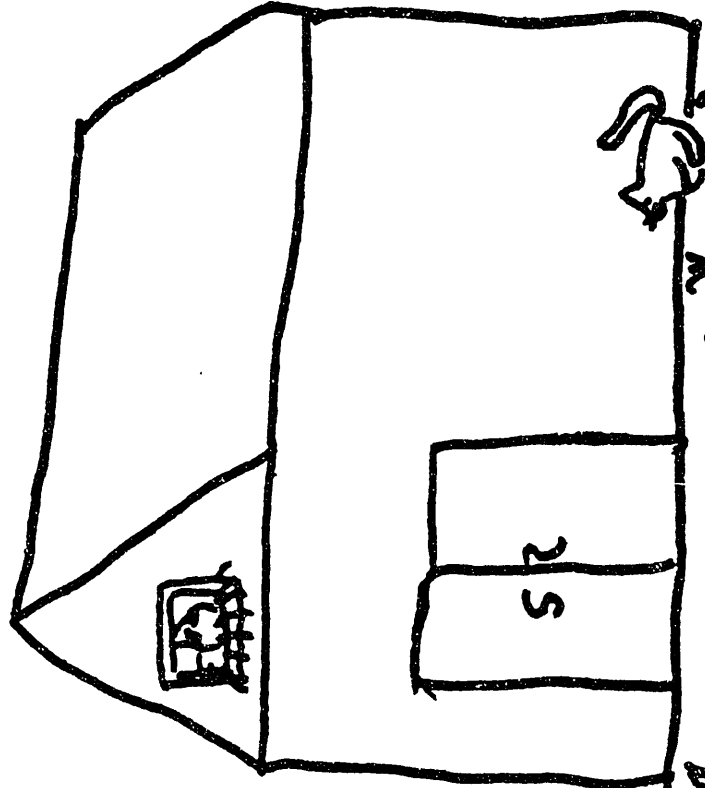
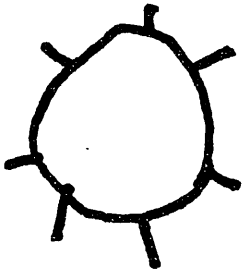


Bu Zach Barta - 3rd

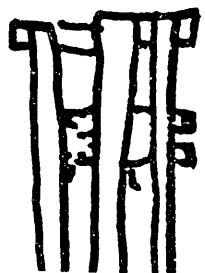
Name: Zach Barta

Grade: 3

School: Springridge Elementary, Richardson ISD



Name: Jim Park
 Grade: 3
 School: Springridge Elementary, Richardson ISD



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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 22. EXAMINING BOARDS

Part VI. State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §§131.51, 131.54, 131.55, 131.57

The Texas State Board of Registration for Professional Engineers proposes amendments to §§131.51, 131.54, 131.55, and 131.57, concerning application for registration. The sections are amended to incorporate the new requirements for registration as set out in the Texas Engineering Practice Act, §12, which become effective September 1, 1992.

Charles E. Nemir, P.E., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nemir 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 clarification of the new requirements and procedures for registration as a professional engineer in Texas. There will be no effect on small businesses as a result of enforcing the sections. 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 Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

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

§131.51. Authority. Applications for registration will be accepted only under the Act, §12(a)(1), (2), [§12(a), (b),] or §21. In the event that more than one section of the Act is applicable, the board reserves the right to

select the section under which registration will be granted. Applications for reregistration will also be considered under the provisions of the Act, §16(e), when an expired license is not renewable by operation of law. Such applications will be processed in accordance with the applicable board rules.

§131.54. General Application Information.

(a) An individual must pass or be exempted from the fundamentals of engineering examination before submitting an application for registration. Those who have passed the examination in a state or a territory of the United States other than Texas must furnish verification of the passage of the examination with the application for registration.

(b) Applications for registration may be submitted at any time; however, in order for the board to review and approve the application in sufficient time for the applicant to schedule the next available principles and practice of engineering examination, the board must receive and accept a completed application by the following deadline dates:

(1) the end of the second week in May for the fall (October) principles and practice of engineering examination.

(2) the end of the second week in October for the spring (April) principles and practice of engineering examination.

(c) The applicant will be notified in writing of the board's approval of the applicant's engineering experience and education and that the applicant has been approved to take the examination. Appropriate forms for the applicant to schedule the examination will be included with the written notification from the board as described in §131.101 of this title (relating to Examinations.)

(d)[(a)] The executive director may accept an application prior to the receipt of supplemental documents such as transcripts of degrees over which the applicant has no control as to time of submission to the board. The board will not consider an application until the following are provided:

(1) a completed application form;

(2) a supplementary experience record;

(3) transcript(s) of degree(s);

[and]
(4) five reference statements (three must be from professional engineers); and

(5) documentation verifying that the applicant has passed the fundamentals of engineering examination.

(e)[(b)] The board may request additional information or the executive director may recommend the applicant provide additional information. If an applicant declines to provide additional information for an accepted application as a recommended by the executive director, the application will be referred for board consideration with documentation of such declination. If, after notification in writing, the applicant fails to provide any part of the required information for an accepted application by the deadlines set by the executive director, the application will be referred to the board to be not approved as an incomplete application. For an accepted application to be considered complete, it must contain at minimum the application form, the supplementary experience record, transcript(s) of degree(s), and reference statements. Withholding information, misrepresentation, or untrue statements on the application for registration or supplemental documents will be cause for rejection of the application.

(f)[(c)] Applicants must be able to speak and write the English language. An applicant who is a native of a country in which the primary language is other than English, shall be required to include with his application evidence that the applicant has passed a TOEFL (Test of English as a foreign language) with a score of 550 or above, and a TSE (test of spoken English) with a score of 200 or above. These tests shall have been taken within two years of the time the application is submitted if the applicant has lived in a non-English speaking country for more than two consecutive years after initially taking the test. An applicant who has received a four-year degree from an ABET-accredited course or who has successfully completed at least six semesters of full-time academic work toward

an advanced engineering degree in the United States shall be exempted from this requirement. An applicant may request exemption from the TOEFL and TSE requirements for other reasons by submitting substantiating evidence and documentary proof of his English proficiency which is satisfactory to the executive director.

(g)[(d)] If in the review of an application or in other communications with an applicant, other than an applicant specified in subsection (f)[(c)] of this section, the board or the executive director finds there is sufficient reason to doubt the English speaking or writing ability of the applicant, the applicant may be required to take the same tests as specified in subsection (f) [(c)] of this section.

§131.55. Application for Registration from Nonresidents. In general, applicants not residents of Texas must apply under the provisions of the Texas Engineering Practice Act (the Act), §21. To be eligible under §21, the applicant must be registered and in good standing in the state in which he is practicing or formerly practiced, and the applicant must have met the requirements for registration under the Act, §12(a)(1) or (2), [§12(a) or (b),] at the time he was granted an original registration. In addition, the application shall include all documentation as described in §131.54 of this title (relating to General Application Information) to be considered complete. If the applicant is currently registered in the state of his residence or practice but registration was granted under requirements less than those specified in the Act, §12(a)(1) or (2), [§12(a) or (b),] he may apply under §12(a)(1) or (2), [§12(a) or (b),] whichever is appropriate, if he has acquired the minimum requirements subsequent to his original registration.

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

§131.57. Registration Fee.

(a) (No change.)

(b) An application for registration as a professional engineer under the Act, §12(a)(1), (2), [§12(a), (b),] or §21 shall be accompanied by a fee of \$50 plus any additional fee required by the Act, which shall be retained by the board regardless of whether the application is approved, not approved, rejected, or withdrawn.

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 May 19, 1992.

TRD-9206876 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: July 22, 1992
For further information, please call: (512) 440-7723

References

• 22 TAC §131.73

The Texas State Board for Registration of Professional Engineers proposes an amendment to §131.73, concerning reference communication. The amendment deletes subsection (d) which is no longer applicable.

Charles E. Nemir, P.E. executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Nemir also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer interpretation of the rule regarding reference communication by deleting the erroneous language. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

§131.73. Reference Communication.

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

[(d) References date more than one year prior to board review are not acceptable.]

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 May 19, 1992.

TRD-9206877 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Professional Engineers

Proposed date of adoption: July 22, 1992

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health (department) proposes an amendment to §133.21, concerning hospital licensing standards (standards) which the section adopts by reference. The amendment will modify Chapter 12 of the standards relating to special licensing standards governing the provisions of mental health services in hospitals. Specifically, the amendment will change the definition of "hospital" in Section 12-3.7 of Chapter 12 to include special hospitals.

The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, allows for the licensing of both general and special hospitals. Because both general and special hospitals may have an identifiable part of the hospital for the provision of mental health services, the department believes this amendment should apply to special hospitals which provide mental health services.

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period the proposed amendment is in effect there will be fiscal implications for state government as the result of enforcing or administering the amendment. Additional costs to the state will arise from the department's statutory duty to enforce the amendment, including added administrative and investigative responsibilities. The department currently licenses 54 special hospitals. Of that number, five currently provide mental health services; the department is unable to determine how many special hospitals may offer those services in the future. Based upon the number currently licensed, for each year of the first five years the amendment is in effect, the department estimates the portion of the increased program costs relating to special hospitals will range from \$12,500 to \$17,500. In addition, the present cost of each administrative hearing conducted by the department is approximately \$1,574 (the number of hearings cannot be projected). There are presently no special hospitals operated by local governments or hospital districts; however, if a local government should establish and operate a special hospital that provides mental health services there will be additional costs to the local government and hospital district. The costs will arise primarily from the hospital's participation in administrative hearings regarding actions against the hospital's license for violation of the standards.

Mr. Seale also has determined that for each year of the first five years this amendment is in effect the public benefit anticipated as a result of enforcing this amendment will be the correction of the personal and monetary abuses identified in the delivery of mental health services and the recognition of patient

rights in special hospitals. The cost to small or large businesses that operate a special hospital that provides mental health services will be the same as previously mentioned for local governments and hospitals districts. There is no anticipated economic cost to persons and there will be no impact on local employment.

Comments on the proposal may be submitted to Maurice B. Shaw, Chief, Bureau of Licensing and Certification, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6645. Comments will be accepted for 30 days after publication of the proposed amendment in the Texas Register. Copies of the proposed amendments may be obtained at the Health Facility Licensure and Certification Division, Texas Department of Health, 8407 Wall St, Austin, Texas.

The amendment is proposed under the Health and Safety Code, §241.027 which provides the Texas Board of Health (board) with authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication effective September 1, 1985, entitled "Hospital Licensing Standards," as amended through September [June] 1992.

(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 May 20, 1992.

TRD-9206943 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: July 25, 1992

For further information, please call: (512) 834-6645

TITLE 28. INSURANCE Part II. Texas Workers' Compensation Commission

Chapter 102. Practice and Procedures

• 28 TAC §102.8

The Texas Workers' Compensation Commission proposes new §102.8 concerning information required on written communications. This information will allow staff to identify the injured worker and match information to a claim file, identify the employer and verify

whether the employer is covered by workers' compensation insurance, and to identify the insurance carrier that will provide benefits to the injured worker. A general rule which includes a requirement for the social security number meets the federal requirement for disclosure and will allow us to include that number on new forms or information requests.

Drew Thigpen, associate director, Financial Management, has determined that for the first five-year period the section is in effect there should be minimal fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Thigpen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be implementation of the Workers' Compensation Act as adopted by the legislature in 1989. There should be minimal effect on large or small businesses because they are currently reporting the majority of this information, and anything not currently reported is readily available. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 8308, §2.09(a) which authorize the commission to adopt rules necessary to administer the Act and Texas Civil Statutes, Article 8308, §2.11(f), which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission.

§102.8. Information Required on Written Communications to the Commission.

(a) All written communications to the commission regarding an injured worker or claim for benefits shall include the following information, if known:

- (1) the injured worker's full name, date of injury, address, and social security number, or work permit (green card) number if no social security number has been assigned;
- (2) the name and address of the claimant, if other than the injured worker;
- (3) the workers' compensation number assigned to the claim by the commission;
- (4) the employer's name and address;
- (5) the employer's Federal Employer's Identification Number (FEIN);
- (6) the insurance carrier's name;
- (7) the insurance carrier's policy number; and
- (8) the insurance carrier's claim number.

(b) Written communications involving medical issues shall also provide the information required by §133.1 of this title (relating to Information Required in Communications).

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 May 19, 1992.

TRD-9206900 Ken Forbes
Policy Rules Administrator
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: June 26, 1992

For further information, please call: (512) 440-3592

Chapter 120. Employers

• 28 TAC §120.2

The Texas Workers' Compensation Commission proposes an amendment to §120.2 concerning the employer's initial report of injury, death, or occupational disease. The amendment proposed adds to the employer's duty to report occupational diseases. Currently the employer is required to report only those occupational diseases reported by the employee. This proposal requires the employer to report any occupational disease of which the employer has knowledge. This is a broader requirement on the employer since it will include any occupational disease reported by the worker but will also include those occupational diseases an employer knows about, perhaps through examination of the worker by a staff physician, which has not been reported by the employee.

Drew Thigpen, associate director, Financial Management, has determined that for the first five-year period the section is in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the section. As employers, state and local governments are, like all covered employers, required to report injuries, deaths, and occupational diseases. Under the broader definition of the employer's reporting requirement, this may mean increased costs related to purchase and completion of the report forms and the costs to mail them to the commission. Since employers have been required to report in the past, and this broader requirement only applies to occupational diseases which the employer knows about which the employee has not reported, there should be very few additional reports required.

Mr. Thigpen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be implementation of the Workers' Compensation Act as adopted by the legislature in 1989. There will be minimal effect on large and small businesses because they are currently reporting the majority of these cases. This effect

should be proportional between the largest and smallest businesses. There will be minimal anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308, §2.11(f), which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission, and Texas Civil Statutes, Article 8308, §7.03(b) which requires the commission to promulgate rules and prescribe the form and manner of employer reports.

§120.2. Employer's Report of Injury.

(a) The employer shall file a written report for each death, each occupational disease [reported by an employee], and each injury that results in more than one day's absence from work for the injured employee.

(b) The report shall be filed as the Employer's First Report of Injury Form TWCC 1 prescribed by the commission.

(c) The report shall be filed with the commission and the carrier, with a copy sent to the employee's mailing address, not later than the eighth day after the receipt of notice of occupational disease, or the employee's first day of absence from work due to injury or death. For purposes of this section, a report is filed when personally delivered, or postmarked.

(d) If a report has not been received by the commission or the carrier, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

(e) An employer who fails to file the report without good cause may be assessed an administrative penalty not to exceed \$500. An employer who fails to file the report without good cause waives the right to reimbursement of voluntary benefits even if no administrative penalty is assessed.

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 May 19, 1992.

TRD-9206903 Ken Forbes
Policy Rules Administrator
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: June 26, 1992

For further information, please call: (512) 440-3592

• 28 TAC §120.3

The Texas Workers' Compensation Commission proposes new §120.3 concerning the employer's supplemental report of injury. This new section requires the employer to file a report when the employee suffers eight days of disability or when the employer increases or reduces post injury earnings or when the injured worker resigns or is terminated.

Drew Thigpen, associate director, Financial Management, has determined that for the first five-year period the section is in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the section. As employers, state and local government will be required to file subsequent reports for injuries, deaths, and occupational diseases. This section will result in increased costs related to purchasing and completing the report forms and the costs to mail them to the commission. Since most employers have continued to report these changes in employment status as they did under the old law, it is difficult to assess what additional expense might be incurred.

Mr. Thigpen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be implementation of the Workers' Compensation Act as adopted by the legislature in 1989. The effect should be proportional between the largest and smallest businesses. There will be minimal anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, TX 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 8308, §2.09(a), which authorize the commission to adopt rules necessary to administer the Act, Texas Civil Statutes, Article 8308, §5.05(c), which allows the commission to promulgate rules regarding subsequent reports by the employer, and Texas Civil Statutes, Article 8308, §2.11(f), which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission.

§120.3. Employer's Supplemental Report of Injury.

(a) As used in this section, the term "employer" means the employer for whom the employee was working when injured.

(b) Except as provided in §129.4(d), the employer shall file form TWCC 6, Supplemental Report of Injury:

(1) when the injured employee has suffered eight days of disability, as defined in §124.7 of this title (relating to

Initial Payment of Temporary Income Benefits), unless this information has already been provided on form TWCC-1, Employer's First Report of Injury; and

(2) when the "weekly earnings after the injury," as defined in §129.1 of this title (relating to Definitions for Temporary Income Benefits Calculation), paid by the employer to an injured employee during the employee's temporary income benefits period increase or decrease because of the injury, or the injured employee resigns or is terminated.

(c) The employer shall file the required reports as follows:

(1) the report required by subsection (b)(1) of this section shall be filed with the commission field office handling the claim and sent to the employer's carrier by first class mail or personal delivery no later than the eighth day after the injured employee has suffered eight days of disability; and

(2) the report required by subsection (b)(2) of this section shall be sent to the employer's carrier by first class mail or personal delivery no later than the eighth day after the end of each pay period in which there occurs a fluctuation in earnings as described in subsection (b)(2) of this section.

(d) Failure to comply with the requirements of this section, without good cause, is a class D administrative violation, subject to a penalty not to exceed \$500.

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 May 19, 1992.

TRD-9206902 Ken Forbes
Policy and Rules
Administrator
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: June 26, 1992

For further information, please call: (512) 440-3592

Chapter 165. Rejected Risk: Injury Prevention Services

• 28 TAC §§165.1, 165.2, 165.3, 165.4

The Texas Workers' Compensation Commission proposes new §§165.1-165.4 concerning injury prevention services required by House Bill 62. This includes the identification of hazards and development of plans to increase the safety and health of workers employed by employers insured through the Texas Workers' Compensation Insurance Facility.

Drew Thigpen, associate director, Financial Management, has determined that the Texas Workers' Compensation Insurance Facility (the Facility) will be phased out in two years so this analysis will only cover the first two year period the section is in effect. The state will incur minimal expenses for postage to notify policyholders and the facility when policyholders are identified. There will be no effect on local government as a result of enforcing or administering the section. There will be no increase in revenue either in state or local government as a result of enforcing or administering this section.

Mr. Thigpen also has determined that for this time period, the public benefit anticipated as a result of enforcing the section will be implementation of the Workers' Compensation Act as adopted by the legislature in 1989. Additionally, insurance premiums may decline as rejected risk policyholders are identified and controls are implemented to reduce risks, perhaps prompting more employers to choose to carry compensation insurance. The facility will incur minimal expenses to mail (or forward electronically) information to the Texas Workers' Compensation Commission. The policyholders will also be required to mail (or electronically forward) information to the Texas Workers' Compensation Commission. Small businesses with corporate offices outside of Texas will incur minimal expenses to mail notification to the Commission of the senior official in Texas. The costs to small businesses will be proportionally more than the cost to large businesses since only one notification will be required for each business whether large or small.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 5.76-2, §4. 06, of the insurance code regarding injury prevention requirements, Texas Civil Statutes, Article 8308, §2.11(f), which allows the executive director to establish the form, manner, and procedure for transmission of information to the commission and Texas Civil Statutes, Article 8308, §2.09(a), which authorizes the commission to adopt rules necessary to administer the Act.

§165.1. Identification and Notification of a Policyholder Insured Under the Rejected Risk Fund Requiring Injury Prevention Services.

(a) The Texas Workers' Compensation Insurance Facility (the facility) shall provide a listing of the policyholders identified as rejected risk employers requiring accident prevention services to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division). This list shall include, in addition to those employers identified through application of the criteria found in the Insurance Code, Article 5.76-2, §4. 06(d), employers who have been in business less than three years and have experienced one or more

fatalities in the 12 months preceding the effective date of the policy.

(b) Employers identified as a rejected risk employer requiring injury prevention services and as an extra-hazardous employer under Texas Civil Statutes, Article 8308, §7.04, shall also comply with the requirements of the extra-hazardous employer program. The division will notify the policyholder and the facility of the policyholder's responsibilities when the policyholder is identified under this chapter and under Chapter 164.

(c) A policyholder, subject to the Insurance Code, Article 5.76-2, §4. 06, whose corporate office is located outside the State of Texas shall, upon receipt of notification, provide the division and the facility the following information:

(1) the name and title of the senior official in Texas with the authority to commit funds and to establish policy, procedures, and abatement actions required to implement the accident prevention plan and correct the hazards identified in the hazard survey;

(2) the official's mailing address; and

(3) the official's business telephone number.

(d) Information required by subsection (c) of this section will be mailed to the Texas Workers' Compensation Commission, Workers' Health and Safety Division, 4000 South IH-35, Austin, Texas, 78704, or provided by electronic document transfer (FAX) to the division at (512) 440-3831.

§165.2. Safety Consultation and Formulation of the Accident Prevention Plan.

(a) Not later than 30 days following the effective date of the rejected risk policy, or receipt of notice of identification, whichever occurs later, the policyholder shall complete a safety consultation using a source approved by the division pursuant to §164.9 of this title (relating to Approval of Professional Sources for Safety Consultations). The consultation may be provided by:

(1) the division, subject to the conditions specified in §§164.8, 164.11, and 164.12 of this title, (relating to Continuation of Extra-Hazardous Employer Status; Request for Safety Consultation from the Division; Reimbursement of Division for Services Provided to Extra-hazardous Employer);

(2) the policyholder's insurance carrier; or

(3) another professional source.

(b) The division shall provide a list

of approved professional sources for inclusion with the notification letter to each policyholder notified.

(c) The safety consultant shall conduct a hazard survey at each appropriate job site of the policyholder and prepare a hazard survey report. The report shall be in a written format prescribed by the commission and shall include a description of any hazardous conditions or practices identified, along with recommendations for controlling the identified hazardous conditions or practices.

(d) The hazard survey report(s), signed by both the consultant and the policyholder, and any attachments shall be filed by the consultant with the division within 24 hours of completing the consultation.

(e) If the initial consultation and report cannot be completed in the time allowed under this section, the policyholder may apply to the commission for an extension of the time requirements upon a showing of good cause.

(f) Formulation of an accident prevention plan shall be in accordance with §164.4 of this title (relating to Formulation of Accident Prevention Plan).

§165.3. Follow-up Inspection by the Division.

(a) The division shall conduct a follow-up inspection to ensure compliance with the accident prevention plan at the policyholder's premises. The inspection shall be conducted not earlier than 90 days or later than six months after the date the accident prevention plan is submitted to the division. If the policyholder has also been identified as extra-hazardous under Texas Civil Statutes, Article 8308, §7.04, and the criteria stated in Chapter 164 of this title, (relating to Workers' Health and Safety-Extra Hazardous Employer Program), the inspection will follow Chapter 164 criteria and requirements.

(b) The inspection shall be conducted and completed during normal work hours.

(c) The policyholder shall allow the division access to the policyholder's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. An employer who without good cause refuses to allow the division access to the employer's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will subject the employer to penalties and sanctions as provided in Texas Civil Statutes, Article 8308, §10.21.

(d) The division may require the presence of the professional source consult-

ant that conducted the hazard survey or assisted with the accident prevention plan development during the follow-up inspection. If the professional source is required during the inspection, the division will coordinate that requirement with the policyholder and the professional source, at the policyholder's expense.

(e) At the time of the inspection, the division may consider as evidence of compliance information which includes, but is not limited to, visual verification, written policies and procedures, attendance rosters for training programs, employee interviews, and purchase orders or receipts for equipment or services necessary to support the accident prevention plan.

§165.4. Report of Follow-up Inspection.

(a) As soon as practical, but not later than 30 days from the date of the follow-up inspection, the division shall provide copies of the inspection report to the policyholder, the safety consultant, the policyholder's workers' compensation insurance carrier, and the facility.

(b) The report shall be in writing and shall specify whether the policyholder has, or has not, implemented the accident prevention plan or other acceptable corrective measures approved by the division.

(c) If the policyholder is found not to have implemented the accident prevention plan, the report shall also contain a list of the specific areas of the accident prevention plan which have not been implemented.

(d) Failure or refusal to implement the accident prevention plan is an administrative violation with penalty not to exceed \$5,000 for each day of non-compliance. The division shall refer the matter to the Commission's Division of Compliance and Practices to pursue the administrative violation if:

(1) the policyholder fails or refuses to implement the accident prevention plan or other suitable hazard abatement measures;

(2) the policyholder does not cancel coverage within 30 days after the date of the division's determination of such failure or refusal; and

(3) the facility notifies the division that the facility will not cancel the coverage.

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 May 19, 1992.

TRD-9206901

Ken Forbes
Policy and Rules
Administrator
Texas Workers'
Compensation
Commission

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For further information, please call: (512) 440-3592

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

• 34 TAC §3.405

(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 Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.405, concerning surplus. This section is being repealed in order that it can be adopted under the 34 TAC Part I, Chapter 3, Subchapter V. The section will be replaced with a new 34 TAC §3.551, concerning taxable capital: surplus.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the repeal is in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the repeal.

Dr. Plaut also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the repeal. This repeal is promulgated under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.405. Surplus.

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 May 19, 1992.

TRD-9206887

Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

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For further information, please call: (512) 463-4028

Subchapter V. Franchise Tax

• 34 TAC §3.544

The Comptroller of Public Accounts proposes new §3.544, concerning reports and payments. This new section replaces §3.413, concerning the same subject matter, which is being repealed in order that it can be adopted under the Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V. This new section contains information concerning franchise tax reports and payments and the calculation of both the taxable capital and earned surplus components of the tax.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.544. Reports and Payments.

(a) Reports and due dates.

(1) Except as provided in subsection (f) of this section, each domestic and foreign corporation subject to the franchise tax levied by the Tax Code, §171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(A) "Beginning date" means:

(i) for a Texas corporation, the charter date; and

(ii) for a foreign corporation, the earlier of:

(I) the certificate of authority date; or

(II) the date the corporation begins doing business in Texas.

(B) Both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The initial franchise tax report and payment are for the privilege periods beginning on the beginning date and ending on December 31 following the first anniversary of the beginning date. For example, if a Texas corporation is chartered on June 1, 1992, the payment due with the initial report will be for the privilege periods from June 1, 1992, through December 31, 1993. In addition, when the first anniversary occurs during the period from October 4 through December 31, there must also be computed and paid with the initial report an additional year's tax for the privilege period beginning on January 1 following the first anniversary and ending on the following December 31. For example, if a Texas corporation is chartered on November 1, 1992, the payment due with the initial report will be for the tax periods from November 1, 1992, through December 31, 1994. The taxable capital component of the tax computed on the initial report is based on the financial condition as of the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date. If there is no such ending date, then the initial report is based on the financial condition on the last day of the calendar month nearest to the end of the corporation's first year of business. The earned surplus component of the tax computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the corporation's first year of business.

(C) The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The annual tax is paid for the privilege period of the calendar year in which the report is due. The taxable capital component of the tax computed on an annual report is based on the financial condition as of the last day of the last accounting period ending in the calendar year before the calendar year in which the tax is originally due. The earned

surplus component of the tax computed on an annual report is based on the business done during the period beginning with the day after the last date upon which the earned surplus component was based on a previous report, and ending with its last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due. For the 1992 annual report, the earned surplus component is based on the business done during the period beginning with the day after the date upon which the previous report was based, and ending with its last accounting period ending date for federal income tax purposes ending in 1991.

(D) See §3.565 of this title (relating to Survivors of Mergers) for special rules concerning corporations which are survivors of mergers.

(E) See §3.545 of this title (relating to Extensions for Annual Reports) for extensions of time to file an annual report.

(F) See §3.567 of this title (relating to Additional Tax on Earned Surplus) for information concerning the additional tax imposed by the Tax Code, §171.0011.

(G) See §3.572 of this title (relating to 1992 Transition) for special rules concerning mergers, reorganizations, and transfers of assets occurring after August 13, 1991, and before January 1, 1992.

(2) The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.

(b) Penalty and interest.

(1) The Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of \$1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. Simple interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980, through December 31, 1981; and, beginning January 1, 1982, at 10% per annum, for taxes due before September 1, 1991. For taxes due on or after September 1, 1991, the yearly interest rate on all delinquent taxes is 12%, compounded monthly.

(2) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency, penalties under the Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 30 days after the date on which the service of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the United States Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under the Tax Code, §111.0081, of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of \$1,000 tax, \$100 penalty and \$15 interest (assume interest accrues \$1.00 per day), then on the 41st day after the deficiency notice is served, \$1,256 would be due (i.e., \$1,000 tax, \$100 initial penalty for not paying when originally due, \$100 penalty for not paying deficiency determination within 10 days after it became final, and \$56 interest).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision of the comptroller on a petition for redetermination becomes final 20 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after a comptroller's decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under §111.0081 of 10% of the tax assessed will be added. Using the previous example, on the 41st day after service of the comptroller's decision, \$1,251 would be due (i.e., \$1,000 tax, \$100 initial penalty, \$100 additional penalty and \$51 interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under the Tax

Code, §111.022, of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

(c) Consolidated reporting. A consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries or the financial data of other separate corporations as though they were a single economic entity, is not allowed.

(d) Amended reports. A corporation may file an amended report for the purpose of correcting a mathematical or other error in a report or for the purpose of supporting a claim for refund. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment.

(e) Comptroller. During the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with his examination, the comptroller may also examine any of the corporation's officers or employees under oath.

(f) Jeopardy determination. If a jeopardy determination is issued to a corporation for an estimated tax liability on an annual reporting period, payment of the estimated liability, plus applicable penalty and interest, shall satisfy the reporting requirements set forth in the Tax Code, §171.202.

(g) Rate. An annual tax rate of \$6.70 per \$1,000 of net taxable capital and an annual minimum tax of \$150 applies to May 1, 1988, through April 30, 1990, of any tax period.

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 May 19, 1992.

TRD-9206866
Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: June 26, 1992

For further information, please call: (512) 463-4028

◆ ◆ ◆
• 34 TAC §3.549

The Comptroller of Public Accounts proposes new 3.549, concerning taxable capital: apportionment. This new section replaces §3.403, concerning the same subject matter, which is being repealed in order that it can be adopted under the Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V. This new section provides guidelines for the apportionment of gross receipts under the taxable capital component of the franchise tax.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.549. Taxable Capital: Apportionment.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital asset—Any depreciable asset, other than an investment, which is held for continued use in the production of income.

(2) Commercial domicile—The principal place from which the trade or business of the entity is directed.

(3) Investment—Any noncash asset not a capital asset and not held as inventory or proceeds from the sale of inventory.

(4) Generally accepted accounting principles (GAAP) method of accounting—That method of accounting defined under §3.547 of this title (relating to Ac-

counting Methods for Computing Taxable Capital).

(5) Gross receipts—All revenues that would be recognized annually under a generally accepted accounting principles method of accounting, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided for in this section or the Tax Code, Chapter 171.

(6) Revenue—Except as otherwise specifically provided for in this section or the Tax Code, Chapter 171, revenue means the value of inflows of economic resources from separate legal entities for delivering or producing goods, rendering services, or carrying out other activities that constitute the entity's operations.

(c) Apportionment formula. Unless otherwise required under the Tax Code, this section, or the rules applicable under the Tax Code, Chapter 171, a corporation's taxable capital is apportioned to this state to determine the amount of franchise tax due by multiplying the corporation's taxable capital by a fraction, the numerator of which is the corporation's gross receipts from business done in this state and the denominator of which is the corporation's gross receipts from its entire business. Corporations whose taxable capital is derived, directly or indirectly, from the sale of services to or on behalf of a regulated investment company as defined by the Internal Revenue Code, §851(a), should refer to the Tax Code, §171.106(c), relating to the apportionment of gross receipts from services for regulated investment companies.

(d) General rules for reporting gross receipts.

(1) A corporation filing an annual report must report 12 months of gross receipts based on the business done by the corporation during its last accounting period that ends in the year before the year in which the tax is due or, if there is no such accounting period then, for the accounting period ending December 31 of the previous calendar year.

(2) When a corporation changes its accounting period ending date, gross receipts for the 12-month period ending with the new accounting period end must be used in calculating the percentage of business done in this state.

(3) A corporation filing an initial report must report gross receipts based on its activities beginning on the day the corporation files its Texas charter or is granted a certificate of authority to do business in Texas or the date that a foreign corporation begins doing business in Texas, whichever is earlier, and ending on the last accounting period ending date that is at least six months after the beginning date

and at least 60 days before the original due date of the initial report; or if there is no such date, then ending on the last day of a calendar month that is nearest to the corporation's first year of business in Texas.

(4) A corporation must report gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.

(5) A corporation whose taxable capital is less than \$1 million, may report its gross receipts according to the method used in the corporation's most recent federal income tax return originally due on or before the date the franchise tax report is originally due. To determine if taxable capital is less than \$1 million, the corporation must apply the accounting methods used in computing that federal income tax return unless another method is required under a specific provision of this title or the Tax Code, Chapter 171. See §3.547 of this title (relating to Taxable Capital: Accounting Methods) for information on accounting methods or changes in accounting methods.

(6) Close and S corporations should see §3.548 of this title (relating to Taxable Capital: Close and S Corporations) for information on using the accounting methods used on the corporation's federal income tax return.

(7) A corporation may not change its accounting methods used to calculate gross receipts more often than once every four years without express written consent of the comptroller, unless the provisions of the Tax Code, §171.111, apply due to an election under that section.

(8) Survivors of mergers occurring between the day on which the tax is based and January 1 of the year the report is due should refer to §3.565 of this title (relating to Survivors of Mergers) for information on reporting gross receipts for survivors of mergers.

(9) Revenues coming into the hands of a receiver of a corporation in receivership are gross receipts of the corporation.

(e) Treatment of specific items in computing gross receipts.

(1) Agency reimbursements. Reimbursements from the principal to a corporation acting as its agent for charges incurred by the agent on behalf of the principal, if the reimbursement does not exceed actual expenses paid to a third party, are not gross receipts.

(2) Bad debt recoveries. Bad debt recoveries are not gross receipts.

(3) Capital assets and investments. Net gains and losses from sales of investments and capital assets must be added together to determine the total receipts from such transactions.

(A) If the combination of net gains and losses results in a net loss, the corporation must report zero gross receipts from such transactions.

(B) If the combination of net gains and losses results in a net gain and both Texas and out-of-state sales have occurred, a separate calculation of net gains and losses on Texas sales must be made. If the Texas net gain is greater than the total net gain, the Texas net gain to report equals the total net gain. Net gain on sale of intangibles held as capital assets or investments is apportioned to the location of the payor. Examples of intangibles include, but are not limited to, stocks, bonds, commodities, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights.

(4) Cash or trade discounts. Cash or trade discounts are not gross receipts.

(5) Club membership fees. Club membership fees are Texas receipts if the place where the club's employees or agents perform the service of providing access to the club benefits is in Texas.

(6) Commissions of stockbrokers. Commissions of a stockbroker for services performed in buying and selling on the stock exchanges are apportioned on the basis of the percentage of such services performed in Texas and the percentage performed in other states.

(7) Computer services and programs. Receipts from the sale of computer software services are apportioned to the location of where the services are performed. Receipts from the sale of a computer program (as the term "computer program" is defined in §3.308 of this title (relating to Computers—Hardware, Software, Services and Sales) are receipts from the sale of an intangible asset and are apportioned to the legal domicile of the payor.

(8) Condemnation proceeds. Condemnation proceeds resulting from the taking of property, except to the extent the proceeds exceed the net book value of the property, are not gross receipts. Amounts exceeding the net book value of the property are gross receipts apportioned based on the location of the property condemned.

(9) Debt forgiveness. Revenues realized by the debtor when the creditor releases the debtor from indebtedness is a gross receipt apportioned to the legal domicile of the creditor.

(10) Debt retirement. Gains on the retirement of a corporation's own indebtedness, such as the purchase by a corporation of its own bonds at a discount, are

gross receipts and are apportioned to the corporation's state of incorporation.

(11) Demurrage charges. Demurrage charges for the detention or storage of equipment used in the transportation of goods and merchandise in interstate commerce are Texas receipts to the extent that the detention or storage occurs within Texas.

(12) DISC/FSC. A DISC (Domestic International Sales Corporation) or a FSC (Foreign Sales Corporation) is treated the same as any other corporation doing business in Texas, except that a commission DISC or FSC may elect to use the percentage of Texas business of its parent which does business in Texas. Receipts from the sale of tangible personal property by a corporation to a DISC or FSC located in Texas are not Texas receipts if the tangible personal property flows uninterrupted from the selling corporation to a foreign purchaser outside of Texas. If a DISC or FSC assembles, packages, repackages, modifies, stores, or otherwise takes physical delivery of tangible personal property in Texas, the receipts from the sale of the tangible personal property are Texas receipts to the selling corporation.

(13) Dividends and interest.

(A) Dividends and/or interest received from a corporation are apportioned to the state of incorporation of the payor.

(B) Dividends and/or interest received from a national bank are apportioned to Texas if the bank's principal place of business is in Texas. See the Tax Code, §171.1031, concerning apportionment of dividends and/or interest received by banking corporations and savings and loan associations.

(C) Dividends and/or interest received from the United States Treasury on United States government debt instruments are not Texas receipts, but are receipts everywhere.

(D) Dividends and/or interest received from Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), and Federal Home Loan Mortgage Corporation (FHLMC) mortgage-backed securities or certificates are apportioned based on the location of the payor. When the payor cannot be determined, 15.78% of the interest or dividend will be considered a Texas receipt.

(E) Dividends and/or interest from any other source are apportioned to the legal domicile of the payor.

(F) Dividends in excess of the payor's accumulated earnings since acquisition or origination (liquidating dividends) are considered a return of capital and are not gross receipts to the receiving corporation.

(14) Equity earnings. Equity earnings of a subsidiary or investee corporation are not gross receipts to the receiving corporation.

(15) Exchanges of property. Exchange agreements for the exchange of real or personal property held for sale in the ordinary course of business for similar property to be held for the same purpose do not constitute gross receipts.

(16) Purchase discounts and allowances. Returns, discounts, and allowances granted to a purchaser are not gross receipts to the purchaser even if refunds are given in cash.

(17) Federal enclave. All receipts from a corporation's sales, services, leases, or other business activities transacted on a federal enclave located in Texas are Texas receipts unless otherwise excepted.

(18) Foreign dividend gross-ups. Foreign dividend gross-ups permitted under the Internal Revenue Code are not gross receipts.

(19) Freight charges. Reimbursements to the seller from the customer for freight charges paid to a third party for goods and merchandise shipped to a customer are not gross receipts when the charges are entered as a separate item on the sales invoice, if the reimbursement does not exceed actual expenses paid to a third party.

(20) Health care supplies and food. Deductions from Texas receipts for sales of health care supplies and food exempted from sales and use tax by the Tax Code, §151.313 or §151.314(a), will be allowed only for the initial sale of items shipped from a location outside Texas directly to a purchaser in Texas. The deduction does not apply when the manufacturer ships the items from outside Texas to an outlet or storage facility in Texas and later sells them.

(21) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are to replace lost net profits, and are apportioned based on the actual location of the interrupted business operations for which the proceeds are being paid.

(B) Fire and casualty insurance proceeds in excess of the net book value of the damaged or destroyed property

are gross receipts and are apportioned to the location of the damaged or destroyed property.

(C) Any gain resulting from life insurance proceeds paid on the death of a corporate officer or other key personnel are gross receipts and are apportioned to the corporation's commercial domicile.

(22) Intercorporate expense allocations. Expense allocations by a corporation among one or more related corporations (other than allocations of income taxes for consolidated return purposes), whether labeled as management fees, administrative overhead, interest, or accounting and legal services, are gross receipts to the parent corporation regardless of whether cash is actually received from the subsidiaries or related corporations, unless an agency relationship exists.

(23) Intercorporate receipts. Receipts from intercorporate sales, leases, and charges for services rendered between a parent and subsidiary, or between related corporations are gross receipts to the corporation which makes the sale, lease, or renders the service.

(24) Intercorporate tax allocations. Allocations by a parent or holding company among its subsidiaries of income tax liability for the purposes of filing a consolidated return are not gross receipts to the parent or holding company.

(25) Leases and subleases.

(A) Receipts from the lease or sublease of real property are apportioned to the location of the property.

(B) Receipts from the lease or sublease of tangible personal property are apportioned to the location of the property. If the property is in Texas only part of the year, lease payments are apportioned based on the number of days spent at the respective locations. If the amount of receipts due under the lease is based on mileage, then the apportionment is based on the number of miles in Texas divided by the number of miles everywhere.

(C) When a lump sum is charged for property leased or subleased but only a portion of which is in Texas, the apportionment of receipts is based on the rental value of each item of property. If the rental value of each item cannot be determined, the apportionment is based on the cost of each item to the lessor (or lessor).

(D) Receipts from the lease or sublease of a vessel engaging in com-

merce are apportioned to Texas based on the number of days engaged in commerce in Texas waters divided by the number of days engaged in commerce everywhere.

(E) If a lease, sublease, or rental of real or tangible personal property is treated as a sale under GAAP, the receipts from the transaction are apportioned in the same manner as a sale. Any portion of the payments designated as interest by the contracting parties is interest receipts.

(26) Litigation awards. All litigation awards are gross receipts with the following exception. Those litigation awards consisting of a recovery of compensatory damages for fire or other casualty losses on property are gross receipts to the extent the recovery exceeds the net book value of the property. Litigation awards are apportioned to the commercial domicile of the recipient corporation.

(27) Loan principal. The principal of a loan received or repaid, is not a gross receipt.

(28) Newspapers. All revenues, including out-of-state advertisements, of a newspaper transacting its primary business activities within Texas constitute Texas receipts, except revenues from the sale of newspapers outside Texas.

(29) Partnerships and joint ventures.

(A) Receipts reflecting the corporation's share of the net profit from a partnership or joint venture, for partnership or joint venture periods ending during the 12 months ending on the date upon which the tax is based, are apportioned to the principal place of business of the partnership or joint venture. A partnership's principal place of business is the location of its day-to-day operations. Effective for reports originally due on or after January 1, 1992, where a partnership's day-to-day operations are conducted equally or fairly evenly in more than one state, then its principal place of business is its commercial domicile. If the corporation's share is a loss, there are zero receipts from the partnership or joint venture.

(B) The corporation's share of the gross receipts of a partnership or joint venture may be used as gross receipts if allowed as revenue under GAAP. The receipts must be apportioned based on normal apportionment rules (e.g., location of payor for dividends and interest, place where service is performed, etc.) as though the partnership did not exist and the receipts passed through it directly to the corporation. This method is not allowed for corporations using the federal income tax method.

(30) Patents, copyrights, and other intangibles.

(A) Receipts from the use of intangible rights.

(i) Revenues from a patent are included in Texas receipts to the extent the patent is utilized in production, fabrication, manufacturing, or other processing in Texas.

(ii) Revenues from a copyright are included in Texas receipts to the extent the copyright is utilized in printing or other publication in Texas.

(iii) Revenues received by the owner of a trademark, franchise, and license are included in Texas receipts to the extent used in Texas; however, in regard to the sale/licensing of computer programs, paragraph (7) of this subsection is controlling.

(B) Sales. Sales of intangibles are allocated based on the location of payor.

(31) Radio/television. All revenues of a radio or television operation which broadcasts or transmits from stations in Texas constitute Texas receipts, even though some of the listening or viewing audiences are outside Texas, except revenues from programs filmed or otherwise developed by a station in Texas which are sold or leased to the national media for broadcasting or transmitting by the national media.

(32) Real property. Receipts from the sale, lease, or sublease of real property are apportioned to the location of the property.

(33) Regulatory agency. Temporary or bonded rate increases of a public utility corporation are gross receipts.

(34) Sales and services. When a transaction involves elements of both a sale of tangible personal property and a service, but there is no documentation showing separate charges for the sale and service elements, the comptroller may determine the amounts allocable to each based on fair values or on the basis of any available evidence.

(35) Sales returns and allowances. Sales returns and allowances allowed by a seller are not gross receipts. They are allowed as a reduction of gross receipts.

(36) Sales taxes. State or local sales taxes collected by a seller are not gross receipts when the tax is imposed on the customer. However, discounts on sales taxes allowed a seller do constitute gross receipts to the seller.

(37) Service procurement. Receipts for the procurement of services are

apportioned to the place where the service procurement is performed.

(38) Services. Service receipts are apportioned to the location where the service is performed.

(39) Stocks. Receipts from the sale of securities are apportioned based on the location of payor. When securities are sold over a stock exchange and the buyer cannot be determined, 6.5% of the net gain (or gross sales price, if the securities were inventory) is a Texas receipt. Receipts from the issuance by a corporation of its capital stock, are not gross receipts.

(40) Subsidies/grants. Subsidies or grants received by a corporation from a governmental agency are gross receipts, except when the funds are required to be expended dollar for dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are apportioned to the location where the activity which qualified for the subsidy or grant is performed.

(41) Tangible personal property. Examples of transactions involving the sale of tangible personal property and which result in Texas receipts include, but are not limited to, the following:

(A) the sale of tangible personal property which is delivered in Texas to a purchaser. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or to transportation vehicles leased or owned by the purchaser. F.O.B. point, location of title passage, or other conditions of the sale are not relevant to the determination of Texas gross receipts;

(B) the sale of tangible personal property delivered in Texas to an employee or transportation agent of an out-of-state purchaser. A carrier is an employee or agent of the purchaser if the carrier is under the supervision and control of the purchaser with respect to the manner in which goods are transported;

(C) the sale and delivery in Texas of tangible personal property which is loaded into a barge, truck, airplane, vessel, tanker, or any other means of conveyance leased and controlled or owned by the purchaser of the property. The sale of tangible personal property which is delivered in Texas to an independent contract carrier, common carrier, or freight forwarder hired by a purchaser of the property results only in gross receipts everywhere if the carrier transports or forwards the property to the purchaser outside this state;

(D) the sale of tangible personal property with delivery to a common

carrier outside Texas and shipment by that common carrier to a purchaser in Texas;

(E) the sale of oil or gas to an interstate pipeline company, with delivery in Texas;

(F) the sale of tangible personal property which is delivered in Texas to a warehouse or other storage facility owned or leased by the purchaser;

(G) the sale of tangible personal property which is delivered to and stored in a warehouse or other storage facility in Texas at the purchaser's request, as opposed to a necessary delay in transit, even though the property is subsequently shipped outside Texas;

(H) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser. This results in Texas gross receipts for the seller and the purchaser;

(I) sales to which the throwback rule applies. For reports due on or after October 2, 1984, each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation (i.e., the throwback rule). This subparagraph will control if it conflicts with any other provision of this section. Another state means a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States. Subject to taxation means constitutional nexus. The seller need not pay tax to the other state; it only has to have enough contact with the other state that the other state could tax the seller. If the seller is doing business, has a certificate of authority, or is incorporated in the other state, the seller is subject to taxation in that state. Voluntarily collecting or paying tax to another state, by itself, is not enough contact to make sales to the other state non-Texas receipts. A corporation which performs any of the activities listed in §3.546(c) of this title (relating to Taxable Capital: Nexus) for taxation of taxable capital in the other state will be considered subject to taxation in the other state. The selling corporation must have nexus in the other state during the accounting year upon which the tax is based. The corporation has the burden of proving it is subject to taxation in the other state.

(42) Tax refunds. Tax refunds are not gross receipts. However, interest awarded on tax refunds are gross receipts.

(43) Telephone company receipts. All receipts for calls of a telephone company in Texas are Texas receipts, except for receipts from interstate calls.

(44) Transactions in Texas waters. Receipts from transactions occurring in Texas waters are Texas receipts. The dividing line between Texas waters and international waters is established at 10.359 statute miles or nine nautical miles from the Texas coastline.

(45) Transportation companies. Transportation companies must report Texas receipts from transportation services by:

(A) including receipts derived from the transportation of goods or passengers in intrastate commerce; or

(B) multiplying total transportation receipts by total mileage in transporting goods and passengers picked up and delivered within Texas (in intrastate commerce) divided by total mileage everywhere.

(46) Unrealized gains and losses. Unrealized gains and losses recorded on foreign currency transactions or translations, marketable security investments or reclassification of marketable security investments, are not gross receipts.

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 May 19, 1992.

TRD-9206865
Martin Cherry
Chief, General Law
Section
Comptroller of Public
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For further information, please call: (512) 463-4028

◆ ◆ ◆
• 34 TAC §3.551

The Comptroller of Public Accounts proposes new §3.551, concerning taxable capital: surplus. This new section replaces 34 TAC §3.405, concerning the same subject matter, which is being repealed in order that it can be adopted under 34 TAC Part I, Chapter 3, Subchapter V. This new section explains surplus for taxable capital purposes.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the section.

Dr. Plaut also has determined that for each year of the first five years the section is in

effect there will be no significant public cost or benefit. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.551. Taxable Capital: Surplus.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) Date upon which based. A corporation filing an annual report must report surplus based on its last accounting period ending date in the previous calendar year, or, if there is no accounting period ending in the previous calendar year, then as of December 31 of the previous calendar year.

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

(1) Amortization—The accounting process of allocating the cost of assets to expense in a systematic and rational manner over the period expected to benefit from the use of the assets.

(2) Depletion—The accounting process of allocating the cost of natural resources to expense in a systematic and rational manner over the period during which the natural resources are consumed.

(3) Depreciation—The accounting process of allocating the cost of tangible assets to expense in a systematic and rational manner over the period expected to benefit from the use of the assets.

(4) Investee—An enterprise which issues voting stock held by an investor.

(5) Tax effect—Any change in cumulative federal income tax liability which results from the different accounting treatment of a transaction for franchise tax purposes than that accorded for federal income tax purposes.

(6) Unrealized, estimated, or contingent loss or obligation—An appropriation of retained earnings for any purpose or an account established to record a loss or obligation anticipated to occur and the amount of which is estimated as of the date on which the tax is based (e.g., self-insurance, warranty, litigation).

(7) Write-down of assets—Any reduction or offset of the cost of an asset through use of a valuation, allowance, reserve, or contra-asset account, or through direct write-off of the asset (except a write-off to reflect the asset's permanent decline in value).

(d) General rules of application.

(1) Accounting methods.

(A) Installment sales. In reporting sales made on an installment basis, the installment sales method of accounting is acceptable for franchise tax purposes only when GAAP (as defined in §3.547 of this title (relating to Accounting Methods)) allows its use.

(B) Partnerships/joint ventures. In reporting an investment in a partnership or joint venture, the equity method of accounting must be used.

(C) Oil and gas corporations. Corporations with \$1 million or more of taxable capital must report all oil and gas exploration and production activities according to the successful efforts or the full cost methods of accounting. Acceptable oil and gas reserve estimating methods to be used in amortizing intangible drilling costs are listed in §3.553 of this title (relating to Methods for Estimating Oil and Gas Reserves). Corporations with less than \$1 million of taxable capital, as determined in accordance with the Tax Code, §171.109(c) may report their oil and gas exploration and production activities using the same method selected to compute their federal income tax.

(D) Other. For more information on methods of accounting for franchise tax purposes, see §3.547 of this title (relating to Accounting Methods).

(2) Tax effect. The amount of any surplus adjustment must be reported net of any accompanying tax effect.

(3) Intercompany tax accounts. A liability account for income taxes owed by one member of a consolidated group to a second member of the group is excluded from the surplus of the first member only if the related receivable account is included in the surplus of the second member. Intercompany tax accounts must be reported on a consistent basis among members of the same consolidated group.

(4) S corporations. An S corporation must calculate its franchise tax in the same manner as any other corporation. For example, accumulated and other adjustment accounts are included in surplus, as are previously taxed income, accumulated earn-

ings and profits, and all other amounts included in the surplus of any other corporation. For more information on an S corporation utilizing the method of accounting used on its federal income tax return, see §3.548 of this title (relating to Close and S Corporations).

(e) Specific rules. Specific rules of application include, but are not limited to, the following.

(1) Amortization of goodwill. The amortization of goodwill is excluded from surplus except when goodwill is included in the parent's cost of a subsidiary investment. Investments in subsidiary corporations or other investees must reflect the cost method of accounting in accordance with the Tax Code, §171. 109(h).

(2) Deferred investment tax credit. For reports due on or after January 1, 1992, deferred investment tax credit is included in surplus. For reports due between January 1, 1988, and December 31, 1991, deferred investment tax credit may be excluded from surplus.

(3) Foreign currency transactions. Realized gains, unrealized gains, and unrealized losses resulting from foreign currency transactions are included in surplus. Realized losses are excluded from surplus.

(4) Foreign currency translations. Foreign currency translations are disregarded when computing surplus. Unrealized gains resulting from foreign currency translations are not included in surplus. Unrealized losses from foreign currency translations are not allowable reductions to surplus.

(5) Income taxes payable. Amounts accrued in excess of actual liability for income taxes relating to current or prior periods (e.g., amounts accrued which relate to a period under IRS audit which has not been agreed to by the corporation) are included in surplus.

(6) Deferred income taxes. For reports due on or after January 1, 1992, deferred income taxes are included in surplus. For reports due prior to January 1, 1992, deferred income taxes may be excluded from surplus to the extent they are recognized under generally accepted accounting principles.

(7) Employee benefits. Liabilities for employee compensation and benefits (e.g., pensions, bonuses, vacations, retirement, medical, insurance, post retirement, and other similar benefits) are included in surplus to the extent they are not debt as of the accounting year end upon which the return is based.

(8) Public utility corporations. Revenue from temporary or bonded rate increases of a public utility company is included in surplus.

(9) Treasury stock. The amount paid for treasury shares is excluded from surplus. See also §3.550 of this title (relating to Stated Capital).

(10) Write-off of assets. A direct write-off of all or a portion of the cost of an asset to reflect a permanent decline in the asset's value, the direct cause of which is a specifically identifiable event, is excluded from surplus.

(11) Redeemable preferred stock. Redeemable preferred stock is not included in surplus if it is debt.

(12) Surplus deficit. A surplus deficit can be subtracted from stated capital.

(13) Dividends. Dividends that are not paid within one year from the date of declaration will be included in surplus.

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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Martin Cherry
Assistant General Counsel
Comptroller of Public
Accounts

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◆ ◆ ◆
• 34 TAC §3.565

The Comptroller of Public Accounts proposes new §3.565, concerning survivors of mergers. This new section replaces §3.412, concerning the same subject matter, which is being repealed in order that it can be adopted under the Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V. This new section contains information concerning corporations which are the survivors of mergers.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administra-

tion and enforcement of the provisions of the Tax Code, Title 2.

§3.565. *Survivors of Mergers.*

(a) Application. This section applies only to corporations which are the survivors of mergers occurring after August 25, 1985. See §3.572 of this title (relating to 1992 Transition) for mergers occurring after August 13, 1991, and before January 1, 1992.

(b) Day upon which the taxable capital component of the tax is based—all reports. If a corporation is the survivor of a merger which occurred between the day upon which the tax is based as provided in the Tax Code, §171. 153, and January 1 of the year in which payment is originally due as provided in the Tax Code, §171.152, then the taxable capital component of the tax will be based on the financial condition of the corporation as of the day after the date of merger. For example, assume a June 30 accounting year end corporation is the survivor of a merger which occurs October 1, 1992. The taxable capital component of the 1993 annual franchise tax report will be based on the financial condition of the corporation as of October 2, 1992, not as of June 30, 1992. This is because the merger occurred between June 30, 1992, and January 1, 1993. The report and payment will be due May 15, 1993.

(c) Initial report—due dates. If the report affected by subsection (b) of this section is an initial report, the report and payment of the tax will be due 91 days after the date of merger. For example, assume a corporation is chartered November 1, 1992, has an October 31 accounting year end, and is the survivor of a merger which occurs December 1, 1993. The taxable capital component on its initial report will be based on the financial condition of the corporation as of December 2, 1993 (because the merger occurred between October 31, 1993, and January 1, 1994). The report and payment will be due March 2, 1994 (91 days after the date of merger), not January 29, 1994 (89 days after the first anniversary date).

(d) Receipts. The survivor should combine its receipts and the receipts of the non-survivors for the same period to determine the percent of Texas business for the taxable capital component of the tax.

(e) Merger credit. See the Tax Code, §171.1531, for an explanation of a credit to which the survivor of a merger may be entitled on the taxable capital component of the tax. This credit or refund must be requested by the survivor; it will not be given automatically.

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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Chief, General Law
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Comptroller of Public
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For further information, please call: (512) 463-4028

◆ ◆ ◆
• 34 TAC §3.567

The Comptroller of Public Accounts proposes new §3.567, concerning additional tax on earned surplus. This new section explains the additional tax imposed on corporations which will no longer have sufficient nexus with Texas to be subject to the tax on earned surplus.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.567. *Additional Tax on Earned Surplus.*

(a) Effective date. The additional tax imposed by the Tax Code, §171.0011, applies to a corporation which, after December 31, 1991, no longer has sufficient nexus with Texas to be subject to a tax based on earned surplus. All provisions of the Tax Code, Chapter 171, apply to the additional tax, unless they conflict with a provision in the Tax Code, §171.0011.

(b) Due date. A final report and payment of the additional tax are due within 60 days after the corporation no longer has sufficient nexus with Texas to be subject to a tax based on earned surplus. However, an estimated return and payment may need to be filed and paid before a corporation will receive clearance from the comptroller to dissolve, merge, or withdraw. As long as the proper amount is paid and an amended return, if needed, is filed within 60 days after the corporation dissolves, merges, or withdraws, then no penalty or interest will be assessed.

(c) Rate and business based on. The additional tax is 4.5% of the net taxable earned surplus earned from the day after the last day for which the earned surplus component was based on a previous report through the date the corporation no longer has sufficient nexus with Texas to be subject to a tax based on earned surplus.

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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◆ ◆ ◆
TITLE 37. PUBLIC
SAFETY AND CORRECTIONS

Part III. Texas Youth
Commission

Chapter 85. Admission and
Placement

Commitment and Reception

• 37 TAC §85.3

The Texas Youth Commission (TYC) proposes amendments to §85.3, concerning the admission process of youth in the custody of the agency. A reference to judge is being changed to committing court.

John Franks, director of fiscal affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more accurate information in agency rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules governing the study.

§85.3. *Admission Process.*

(a) (No change.)

(b) Rules.

(1)-(10) (No change.)

(11) Reception staff transports youth to their initial placements and notifies the families, the region parole officer, committing court, [judge,] prosecuting attorney, chief probation officer, and others as needed of the placement location.

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 May 18, 1992.

TRD-9206909 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 26, 1992

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

◆ ◆ ◆
Placement Planning

• 37 TAC §85.37

The Texas Youth Commission (TYC) proposes amendments to §85.37, concerning discharge of youth in the custody of the agency. A requirement that a brief summary of adjacent must be developed is being added to documentation procedures for discharging TYC youth.

John Franks, director of fiscal affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more complete record. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment to the section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to discharge committed youth.

§85.37. *Discharge.*

(a) Policy. Texas Youth Commission discharges youth when specific criteria have been met. All youth are discharged by age 21.

(b) Rules.

(1)-(4) (No change.)

(5) Approvals. Youth discharges are requested by the primary service worker and approved by the institutional superintendent or regional director as appropriate. A brief closing summary of the youth adjustment while on parole supervision at home is included. Approvals ensure that discharge criteria have been met. Discharge of TYC youth placed out of state is requested by the deputy administrator of interstate compact and approved by the director of community services. Discharges for other special circumstances are approved by the executive director.

(6) (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 May 18, 1992.

TRD-9206907 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 26, 1992

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

Chapter 93. General Provisions

Records, Reports, Forms

• 37 TAC §93.57, §93.59

The Texas Youth Commission (TYC) proposes amendments to §93.57, concerning access to youth records; and §93.59, concerning youth masterfile records. In §93.57 corrections in terms are being made. In §93.59, the amendment states that the masterfile will be moved with a youth or by UPS following a youth's movement to a different TYC program.

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

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be having needed information readily available to a TYC program receiving a new youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The amendments are proposed under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to keep written records on each child.

§93.57. Access to Youth Records.

(a) Policy. Texas Youth Commission (TYC) complies with the Texas Family Code and the Texas Human Resources Code which limit access to all youth records. Youth files are marked "confidential" and kept in locked facilities.

(b) Rules.

(1) Each program administrator is responsible for ensuring that files or records on individual youth are open to inspection only by those given access under the Texas Family Code, Title 3 as interpreted by TYC.

(A) (No change.)

(B) Files are open to the judge, probation officers, and professional staff or consultants of the juvenile court. This means that only the juvenile court that committed the youth to TYC and its probation officers, professional staff or consultants have access to a youth's records. One a juvenile court certifies a youth for [criminal] trial, a subpoena is required from the criminal court for access to the youth's records.

(C)-(E) (No change.)

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

(5) Medical records are considered confidential (Texas Civil Statutes, Article 4495b, [Title 71,] §5.08) and may only be released upon receipt of a written consent to release of medical records form which specifies the following:

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

(6)-(10) (No change.)

§93.59. Youth Masterfile Records.

(a) Policy. Texas Youth Commission (TYC) staff maintain a masterfile for each youth containing accurate and com-

plete records of commitment documents, assessment reports, and significant decisions and events regarding the youth. Files are stored and transported in a manner that ensures security and confidentiality. Youth masterfiles shall remain in the custody and control of authorized personnel at all times and follow the youth as specified in the rules of this section. Authorized personnel are TYC staff or probation staff under contract with TYC to provide parole services. The masterfile is the official set of records maintained for each youth. It physically consists of two separate file folders called the casework subfile, and medical subfile. All staff as specified on Child Care Forms (CCF) or form instructions are responsible for completing, dating, signing, and filing all required documentation. See General Operating Policy (GOP) 75.07, §93.57 of this title (relating to Access to Youth Records). See GOP.75.13, §93.63 of this title (relating to Youth Records Disposition).

(b) Rules.

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

(3) Transportation of records.

(A) A TYC staff member transporting a youth from one program to another also transports the masterfile between authorized placements.

(B) When a youth leaves a placement and is transported to a new TYC placement by non-TYC staff, the masterfile must be sent to the new location by United States Certified mail, UPS, or Central freight within 24 hours of that youth's departure. [If a youth is being transported by public transportation or may other non-TYC staff, his masterfile must be transported simultaneously to the new location by a TYC staff member or sent certified mail within 24 hours of the youth's departure.]

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 May 18, 1992.

TRD-9206908 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 26, 1992

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

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register

publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The State Board of Insurance of the Texas Department of Insurance, at a board meeting scheduled for 8:30 a.m. on June 17, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in

Austin will consider revisions to the standard and uniform Notary Public Errors and Omissions Policy of the Western Surety Company of Sioux Falls, South Dakota.

The proposed policy revisions incorporate previously board-approved amendatory language into the policy. The revisions add policy wording required by the Insurance Code, Articles 21.56 and 21.49-2A. The revision also updates the complaint notice to reflect the Texas Department of Insurance's new address and fax number and adds the required company toll-free telephone number to the policy.

There are no rate consequences for the proposed form revisions.

Copies of the full text of the proposed policy revisions are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information

please contact Lynette Brown at (512) 322-4147, refer to (Reference Number O-0592-25-l).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts board action on this filing from the requirement of the Administrative Procedure and Texas Register Act.

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 May 19, 1992.

TRD-9206846

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

For further information, please call: (512) 463-6327



Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

Permits

• 25 TAC §133.21

The Texas Department of Health (department) is withdrawing the effectiveness of the emergency amendment to §133.21 effective June 9, 1992.

HISTORY: The emergency amendment was originally published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 88), effective December 30, 1991; and the emergency effectiveness was extended for an additional 60 days in the April 21, 1992, issue of the *Texas Register* (17 TexReg 2840). In addition, the department adopted an emergency amendment to the emergency amendment in the May 22, 1992, issue of the *Texas Register* which will remain in effect until June 9, 1992.

Issued in Austin, Texas, on May 19, 1992.

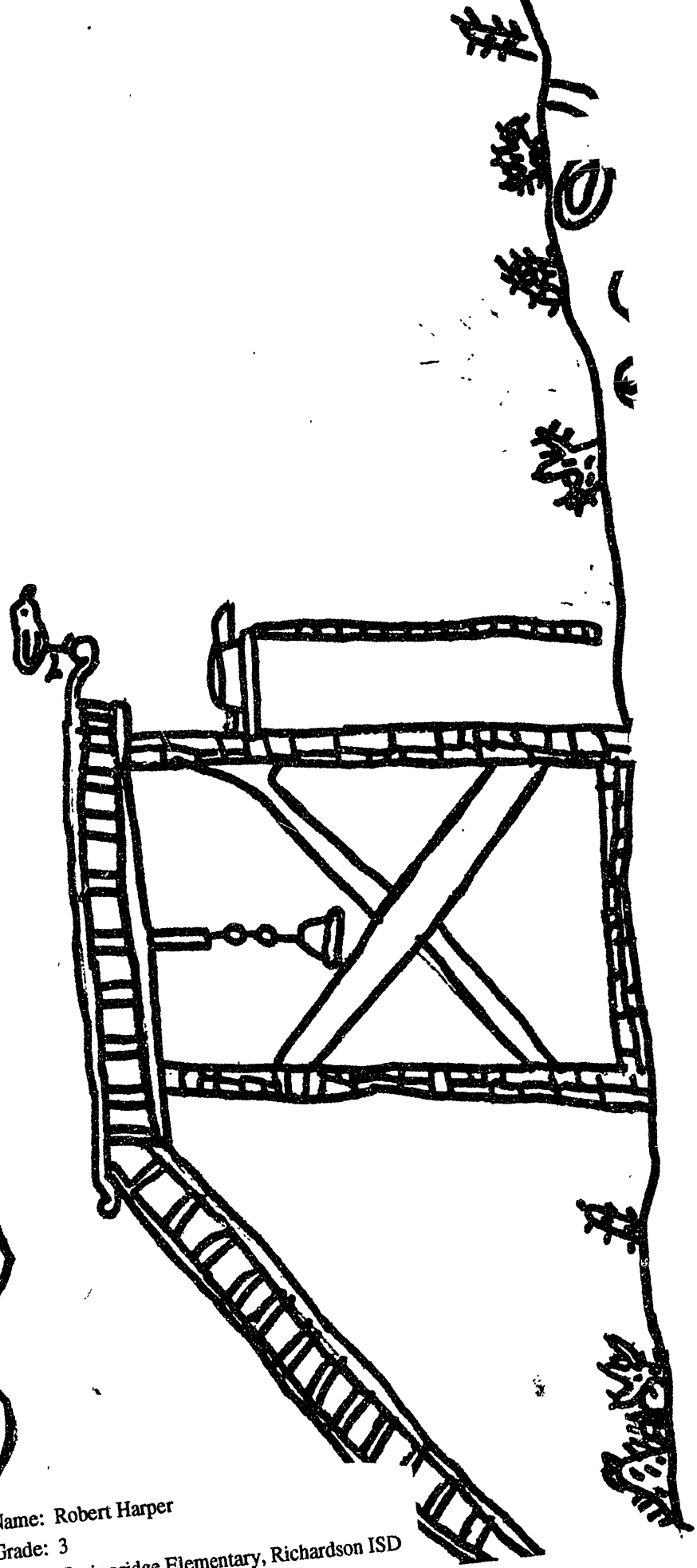
TRD-9206875 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: June 9, 1992

For further information, please call: (512) 834-6650



ROBERT HARPER 3rd



Name: Robert Harper
Grade: 3
School: Springridge Elementary, Richardson ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

Standards

• 25 TAC §133.21

The Texas Department of Health (department) adopts an amendment to §133.21, concerning hospital licensing standards (standards) with changes to the proposed text as published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 92). There are also changes to the text of the hospital licensing standards (standards) which the section adopts by reference. The amendment to the standards themselves adds a new Chapter 12 concerning special licensing standards governing the provision of mental health services in hospitals.

Chapter 12 has been added to address patient care and patient rights in the delivery of mental health services in general hospitals in response to direction from the Senate Interim Study Committee on Health and Human Services and the office of the lieutenant governor that resulted from the committee's study of abuses surrounding the operation of private psychiatric hospitals. The chapter is intended to coordinate with the rules recently adopted by the Texas Board of Mental Health and Mental Retardation (TXMHMR) in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1290) and to provide standards and recommendations to prevent the occurrence in general hospitals of the recently identified abuses in the delivery of mental health services in private psychiatric hospitals. Because of the narrow scope of rulemaking authority granted to the Texas Board of Health in the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, much of the chapter's content is, of necessity, couched in terms of recommendations.

Chapter 12 adopts by reference requirements in the "Medicare Conditions of Participation for Hospitals," as described in Title 42, Code of Federal Regulations, Chapter IV, Part 482, Subpart A, §482.2 and §482.57. The chapter also recommends that general hospitals comply with the following: Title 42, Code of Federal Regulations, Chapter IV, Part 482, Subpart E, §482.61 and §482.62; the standards set out by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) in the most recent edition of the

"Consolidated Standards Manual" for special treatment procedures and patient rights; and 25 Texas Administrative Code, §404.81, the TXMHMR rules relating to patient abuse and neglect in private psychiatric hospital in 25 Texas Administrative Code, Chapter 401. The specific sections of Chapter 12 cover: purpose; application and scope; definitions; application for license or renewal license; notice to department; Medicare standards adopted and recommended; special treatment procedures; administration of medications; patient rights; patient complaint policy; compliance with reporting requirements of other state laws; protection against certain crimes and consumer abuses; compliance with applicable provisions of the Texas Mental Health Code, Title 7, Subtitle C; special standards covering investigations, notice, opportunity for correction, and enforcement actions.

The following comments were received concerning the proposed amendment. All references to "chapter" are to Chapter 12 and all references to "section" are to sections in Chapter 12.

COMMENT. Concerning the title of Chapter 12, a commenter said that use of the word "general" in the term "general hospital" was redundant because the definition of "hospital" includes a general hospital.

RESPONSE: The department agrees and has removed the modifier from the section title.

COMMENT: Concerning Chapter 12 generally, the numerous comments received by TXMHMR and discussed in the February 14, 1992, issue of the *Texas Register* by TXMHMR (17 TexReg 1290) are applicable to the department rules in Chapter 12 and should be considered.

RESPONSE: In an effort to comply with the findings and instructions from the Senate Interim Committee on Health and Human Services and to work with other agencies, the department has considered the comments received by TXMHMR and have included definitions and language as applicable to the department's final rules in Chapter 12.

COMMENT: Concerning Chapter 12 generally, a commenter requested that all references to recommendations in the proposed rules be revised in the final rules to require compliance, through the use of terms such as "shall" or "must."

RESPONSE: The department is aware of the enforcement problems posed by the use of "recommendations;" however, the department believes in the necessity of maintaining a parity with the TXMHMR rules addressing private psychiatric hospitals. Because of the narrow scope of rulemaking authority granted

to the Texas Board of Health (board) in the Texas Hospital Licensing Law, the board is without the authority to adopt many of the TXMHMR provisions and thus is limited to "recommending" many of the provisions in the rules. The recommendations will not be used by the department in enforcement actions against affected hospitals; however, such hospitals should be aware that the "recommendations" may serve as standards of care in civil suits against violating hospitals. The department will refer cases involving risks to patient health and safety, including those arising under the "recommendations" to the attorney general for injunctive action.

COMMENT: Concerning Chapter 12 generally, the Hospital Licensing Advisory Council stipulated in its recommendation for approval of final rules to the board that the recommendation was based upon the premise that these rules should not be considered as a standard of care for hospitals who do not meet the definition of a hospital in these standards.

RESPONSE: The department recognizes the council's concern and has advised them that the rules apply only to those hospitals that meet the definition of hospital in Section 12-3.7. If a hospital voluntarily applies the provisions of Chapter 12 to all services within the hospital, the department has no authority to prevent that; however, it is the board's intent that Chapter 12 apply only to identifiable units of hospitals that provide mental health services as that term is defined in these rules, which include both chemical dependency units and psychiatric units.

COMMENT: Concerning Chapter 12 generally, a commenter questioned the necessity of requiring all hospitals licensed by the department to comply with Chapter 12. The commenter further objected to the "duplicative" inspection processes by the department, TXMHMR and the Texas Commission on Alcohol and Drug Abuse (TCADA).

RESPONSE: The department believes that both of the commenter's concerns are addressed in the multi-agency memorandum of understanding (MOU) among 14 affected state agencies. This MOU sets out clearly the regulatory duties of the three facility licensing agencies, the department, TXMHMR and TCADA, and provides for the coordination of inspections and enforcement actions with the current facility licensing agency being the primary enforcement agency. One express purpose of the MOU is to prevent fragmented and duplicative inspections and enforcement actions. Chapter 12 applies only to the identifiable part of a general hospital (licensed by the department) which provides mental health services.

COMMENT: Concerning Chapter 12 generally, a commenter requested that the department be the sole agency responsible for regulating the separate and distinct units of medical-surgical hospitals which provide mental health services. The commenter objected to regulation by multiple state agencies, i.e., the department, TCADA, and TXMHMR.

RESPONSE: The commenter's concerns are not addressed in the final rules; however, they are addressed in the MOU presently being signed by the three state agencies referenced by the commenter. In the MOU, the participating agencies have agreed that the state agency with statutory authority to regulate a hospital will continue to have primary responsibility for the hospital. The primary agency may ask other signatory agencies to participate as consultants in inspections, surveys, and investigations.

COMMENT: Concerning Chapter 12 generally, because the treatment for mental illness is so different from that of chemical dependency treatment, one commenter questioned the feasibility of combining both types of treatment in one set of rules.

RESPONSE: The department recognizes the concern expressed by the commenter and has added a new definition for "chemical dependency" and incorporated in the definition of "mental health services" the provision of inpatient chemical dependency treatment. At this time, the department will proceed with the rules incorporating both types of treatment, but will consider, if necessary in the future, a separation of the treatments into individual sets of rules.

COMMENT: Concerning Chapter 12 generally, the Texas Hospital Association (THA) stated that the department should work with THA and be instructed by it in determining what requirements, if any, the department may impose on hospitals that are subject to Chapter 12 regarding allegations of abuse and neglect. The THA further objected to the use in the rules of the word "threat."

RESPONSE: In statutory and regulatory interpretation, words that are not defined or that are not words of art have their ordinary meanings. While the department does not think that "threat" is beyond the comprehension of ordinary readers, the department agrees to define the word "threat" and has done so in Section 12-3.19. The department will consider bona fide comments from any organization or individual interested in improving the regulatory capability of the department. This would include THA and any other person with productive ideas. The department however, must reserve the final judgment in such matters to itself and to its policy-making body, the Texas Board of Health. In this particular instance, for the department to accept THA's comment in its entirety, would be to ignore the findings of the Senate Interim Committee on Health and Human Services in the area of private psychiatric hospitals and disregard the committee's instruction to the department to cooperate with the department's sister agencies in adopting rules to address the problems.

COMMENT: Concerning Section 12-2, as re-

gards the application and scope of Chapter 12; and Section 12-4.2.2, as regards admitting and housing patients in an identifiable part of the hospital, a commenter requested clarification concerning which licensed hospitals are affected by Chapter 12.

RESPONSE: The department agrees that the application and scope of the chapter need clarification. Accordingly, the department has specifically added two additional subsections to address this issue. The first of these, Subsection 12-2.2, clarifies that the chapter does not apply to the occasional provision of mental health services in a hospital without an organized mental health service and identifiable part of the hospital dedicated to the provision of those services. Of the hospitals that have an organized service and an identifiable part dedicated to the provision of mental health services, subsection 12.2.3 specifies that the chapter applies only to the identifiable part of the hospital approved by the department for the admission and housing of patients receiving mental health services.

COMMENT: Concerning Section 12-3, as regards definitions, a commenter asked that the term "treatment team" be defined.

RESPONSE: The department disagrees, as the proposed rules are congruent with TXMHMR rules; in addition, each patient's treatment team will vary.

COMMENT: Concerning Section 12-3.7, as regards definition of "hospital," two commenters requested that the proposed definition be deleted, and the term "hospital" as used in Section 12.11.1, be modified to convey the meaning that each hospital licensed by the department that has a wing or a unit dedicated to the provision of mental health services must comply with the special standards recited in Chapter 12.

RESPONSE: The department agrees in part and has retained the definition of "hospital" by incorporating the suggested language in the definition.

COMMENT: Concerning Section 12-3.11, as regards the definition of "licensee," a commenter stated that the definition was not specific enough and in the context of the rules could be misconstrued to mean a "person."

RESPONSE: The department agrees and has revised the term "licensee" to mean "a person who has been granted a license to operate a hospital by the department."

COMMENT: Concerning Section 12-3, as regards definitions, a commenter suggested adding definitions in Subsections 12-3.14 and 12-3.17 for the words "patronage" and "polypharmacy" because they are necessary to parallel certain portions of the revised TXMHMR rules.

RESPONSE: The department agrees and has added definitions for those two words. The definition for "patronage" is taken directly from the current revised TXMHMR rules for private psychiatric hospitals. The definition for the word "polypharmacy" is based upon a definition of the word in certain TXMHMR rules that are now repealed and replaced by recently TXMHMR adopted rules on the ad-

ministration of medication in TXMHMR hospitals. The department has broadened the former definition of the word by changing the word "neuroleptic" to "psychoactive." This broadens the definition enough for the purposes of Chapter 12; however, it does not broaden it so much as it has been broadened by TXMHMR.

COMMENT: Concerning Section 12-4, as regards application for a hospital license or renewal license, a commenter questioned the intent of a supplemental application form to provide additional information relating to mental health services.

RESPONSE: The department will be expanding the current hospital license application form to include additional questions, if applicable, about the hospital's mental health services. If a hospital establishes mental health services, the hospital must submit drawings and inform the department of any changes to its mental health services throughout the licensing year.

COMMENT: Concerning Section 12-4.2, as regards pre-service notice to the department, during the comment period, the department should be made aware of hospitals which may be providing mental health services in areas of the hospital which have not been approved for occupancy.

RESPONSE: The department has developed a new Section 12-4.2 which requires a hospital to notify the department of its intent to initiate the provision of mental health services and the requirement for approval of occupancy after completion of plan reviews and construction inspections. Commensurate with this change, the department has modified the title of section 12-4.

COMMENT: Concerning Section 12-5, as regards adoption and recommendation of Medicare standards, two commenters requested that the department delete the first sentence of proposed Section 12-5.1, relating to mandatory compliance with the Medicare conditions of participation for hospitals. Each commenter gives as his reason that the rule exceeds the board's statutory rulemaking authority.

RESPONSE: The department disagrees because the proposed language does not exceed statutory limits or the board's rulemaking authority under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241. The law permits the board to adopt the Medicare conditions of participation in 42 Code of Federal Regulation, §§482.2-482.57 as standards for hospital licensure.

COMMENT: Concerning Section 12-5, two commenters requested the deletion of the last sentence in the Section 12-5.1, relating to the two Medicare conditions of participation for private psychiatric hospitals. Again, each commenter gave as his reason that the board does not have the authority to adopt such provisions as rules.

RESPONSE: The department agrees in part and disagrees in part. Had the board adopted the two conditions as "rules" the commenters would be correct; however, as regards the use of the two conditions of participation for private psychiatric hospitals in 42 Code of

Federal Regulation, §482.61 and §482.62, the board again recommends that the hospitals also comply with these conditions relating to medical records and special staff requirements for psychiatric hospitals. The department believes that the provision of mental health services provided in hospitals licensed by the department should meet the same requirements as the mental health services provided in private psychiatric hospitals licensed by TXMHMR.

COMMENT: Concerning Section 12-6, as regards special treatment procedures, two commenters requested that Section 12-6 be deleted because the board does not have the statutory authority to adopt the rule.

RESPONSE: The department agrees that there is no basis for the board to adopt the provision as an enforcement standard; however, the department maintains that the board has again recommended that hospitals voluntarily comply with the provision in the interest of maintaining the same quality of service delivery in all hospitals providing mental health services, irrespective of the state agency licensing the hospital. The department has enumerated the definition of special treatment procedures as given in TXMHMR rules 25 Texas Administrative Code, §401.583.

COMMENT: Concerning Section 12-6, a commenter took exception to the requirement that the governing board and medical staff bylaws address specifics as to "how to" provide treatment procedures.

RESPONSE: The department agrees and has revised the language to require the governing body approve in the bylaws that policies and procedures be established and implemented for mental health service treatment procedures. The department also has changed the definition of "hospital administrator" to "hospital administration" and incorporated language throughout the chapter requiring hospital administration to enforce the bylaws and policies and procedures approved by the governing body for mental health services treatment and other provisions.

COMMENT: Concerning Section 12-7.1, as regards administration of medications, a commenter asked if the use of the term "direct supervision" by a registered nurse (RN) for all medication administration procedures included the RN's on-site observation of the setup, delivery, and documentation of the administration of medication for a patient by any RN or licensed vocational nurse (LVN).

RESPONSE: The term "direct supervision" means the degree of supervision recognized in the rules of the Texas State Board of Nurse Examiners as appropriate for a registered nurse to exercise over a licensed nurse performing medication administration duties under the nursing plan of the hospital.

COMMENT: Concerning Section 12-7.2, as regards administration of medication, a commenter stated the term "licensed nurses" should state RN and LVN in this section if that is the department's intent.

RESPONSE: The department considers the term "licensed nurses" to include RNs and

LVNs, as both disciplines must have a license to practice as a nurse in Texas.

COMMENT: Concerning Section 12-7.2, as regards administration of medication, a commenter requested the deletion of the language in Section 12-7. 2, relating to adoption of TXMHMR standards for state hospitals in the area of administration of medications. One commenter expressed concerns regarding proposed Section 12-7.2, as it relates to medications. The commenter stated that requiring department licensed hospitals to use specific TXMHMR forms, as they relate to administration of medications, may lead to "presumptive deficiencies."

RESPONSE: The department disagrees with the request to delete the language requiring the adoption of TXMHMR standards governing medication administration for the previous mentioned reason that the need to have consistent rules governing the provision of all mental health services in hospitals throughout the state. The department, however, agrees with the second objection relating to TXMHMR forms and has modified the language to allow for use of TXMHMR forms or other forms which address the same items as contained in the TXMHMR forms.

COMMENT: Concerning Section 12-7.2, as regards administration of medications, a commenter recommended that Section 12-7.2 be revised to describe the circumstances in which polypharmacy could be used.

RESPONSE: The department agrees in part and has added language from the repealed TXMHMR rules in 25 TAC §405.826 as an illustration of how a physician, who meets the same qualifications as but is not the chief physician or chief physician designee, might be allowed to participate in the prescribing of polypharmacy. The department also has added a new definition for polypharmacy.

COMMENT: Concerning Section 12-8, as regards patient rights, a commenter recommended that the section be revised to require the enforcement of a patient rights policy based on the substantive provisions of the Health and Safety Code, Chapter 576, and the standards in the current edition of the Consolidated Standards Manual published by JCAHO. The commenter also requested that the substantive provisions themselves be described rather than referenced.

RESPONSE: The department disagrees for two reasons: first, the change to enforcement would exceed the board's capacity to adopt and the department's authority to enforce; and second, much of the substantive material is contained in the Recommended Patient's Bill of Rights, as described in Attachment A to Chapter 12.

COMMENT: Concerning Section 12-8, a commenter believes that the Senate Interim Study Committee on Health and Human Services directed the state agencies to inform and enforce patients' rights in hospitals which provide mental health services.

RESPONSE: The department has established recommendations in Section 12-8.2 for the education of hospital employees, governing body, hospital administration, medical

staff, patient, and family and friends concerning the Recommended Patient's Bill of Rights. The recommendations allow for an ongoing review and explanation of the content of the Recommended Patient's Bill of Rights.

COMMENT: Concerning Sections 12-8.2 and 12-8.2.2, as regards display of rights, a commenter noted that the rule recommends that the hospital widely display the Recommended Patient's Bill of Rights and distribute the document to everyone but the hospital employees. The commenter requested that the document also be distributed to hospital employees.

RESPONSE: The department has revised the rule to remedy this omission and to include hospital employees. The revised rule also includes a requirement that the content of the document be reviewed with hospital employees at periodic staff training sessions.

COMMENT: Concerning Sections 12-8.2 and 12-8.2.2, a commenter recommended that Section 12-8.2 be revised to include language providing that "Each patient shall have the rights as delineated in the Patient's Bill of Rights," and to phrase the display provision in mandatory terms.

RESPONSE: The department disagrees, as the proposed language is beyond the authority of the board to adopt and the department to enforce and must remain a recommendation (see Health and Safety Code, §241.026).

COMMENT: Concerning Section 12-8.2.2, as regards posting of the Recommended Patient's Bill of Rights, a commenter considered as unnecessary and unattractive the requirement that the posting be in all areas.

RESPONSE: The department disagrees, as the proposed language parallels the TXMHMR final rules.

COMMENT: Concerning Section 12-8.3, as regards education of a patient's family and friends, a commenter suggested that the section be revised to include language mandating patient signature, witnesses and filing of the Recommended Patient's Bill of Rights.

RESPONSE: The department disagrees, as the proposed language is beyond the authority of the board to adopt and the department to enforce and must remain a recommendation (see Health and Safety Code, §241.026).

COMMENT: Concerning Section 12-9, as regards patient complaint policy, a commenter believes that the Senate Interim Study Committee on Health and Human Services directed the state agencies to inform and enforce the patient complaint policy in hospitals which provide mental health services.

RESPONSE: The department has established recommendations in Section 12-9 for the education of hospital employees, governing body, hospital administration, medical staff, patient and family and friends of the patient concerning the complaint policy. The recommendations allow for an ongoing review and explanation of the content of the patient complaint policy. The department has changed the terminology of the "complaint hot line" to "patient information and complaint line" so as not to construe the purpose of the phone as a crisis intervention line.

COMMENT: Concerning Section 12-9, a commenter stated that the section should be deleted in its entirety. The commenter's reason is that the posting of the "Recommended Patient's Bill of Rights" should suffice to apprise patients and families of their rights.

RESPONSE: The department disagrees and considers the proposed language requiring a hospital patient complaint policy, patient information provided regarding the policy, and the posting of the policy to be necessary to assure that patient complaints are addressed.

COMMENT: Concerning Section 12-9, a commenter objected to the provisions in the section relating to the hospital patient complaint policy.

RESPONSE: The department disagrees with the commenter's objection, as the proposed rule is applicable for all licensed hospitals to assure that patient complaints are addressed.

COMMENT: Concerning Section 12-9, a commenter objected to the posting of the hospital's complaint procedures throughout the hospital as unsightly and untidy.

RESPONSE: The department disagrees because it regards notice to patients, families and friends of the existence of the policy to be of an importance equal to, if not greater than the aesthetics of mental health units.

COMMENT: Concerning Section 12-10, as regards compliance with other state law, a commenter recommended that the section be deleted because the board does not have the authority to adopt rules suggesting compliance with the rules of another agency.

RESPONSE: The department disagrees for the previously mentioned reason that the board has again made a recommendation and has included language to encourage the hospital to educate all governing body members and appropriate staff about civil and criminal laws that could govern conduct occurring in the provision of mental health services. The department believes that every person providing care of any type should be required to review these enumerated laws as part of a medical jurisprudence in-service training. The department has added language from TXMHMR's current rules on private psychiatric hospitals and recommends a hospital policy forbidding violation of TXMHMR rules, specifically to emphasize the need for instruction in this area.

COMMENT: Concerning Section 12-10.1, as regards reporting requirements, a commenter recommended that the section be deleted in its entirety, and suggested the department prepare and distribute to hospital personnel a brochure regarding incidents that are reportable by law; and concerning Section 12-10.2, as regards protection against certain crimes and consumer abuses, a commenter recommended that this section be deleted in its entirety and, in lieu of its adoption, the department develop and distribute a brochure containing a list of the offenses and references on whom to contact to file a complaint.

RESPONSE: The department disagrees for the previously mentioned reason that the board has made a recommendation and has included language to assure all governing

body members and appropriate staff are educated about civil and criminal laws that may govern conduct occurring in the provision of mental health services. The department believes that every person providing care of any type should be required to review these enumerated laws as part of a medical jurisprudence in-service training. The department agrees that the brochure has merit and may at some time in the future prepare such a brochure. The department has corrected Subsection 12-10.1.1 to delete an erroneous statement that child abuse also had to be reported to the department as the licensing agent, if abuse took place in a hospital. The provision now recommends that it be reported to the department if it took place in a hospital licensed by the department.

COMMENT: Concerning Section 12-10.3, as regards compliance with certain provisions of the Texas Mental Health Code, a commenter recommended that the section be deleted because it is unnecessary.

RESPONSE: The department disagrees because in many areas of patient care it would be impossible for the hospitals licensed by the department to maintain the same standards as those licensed by TXMHMR if the provisions were deleted.

COMMENT: Concerning Section 12-10.3, two commenters recommended that the rules be revised to allow psychologists to perform admission intake assessments. One commenter opposed any rule change that would allow psychologists to perform admission intake assessments.

RESPONSE: The department has investigated the question of who is qualified by training and supported by law to admit patients to private psychiatric hospitals, what elements of the admission process are integral to adequate patient care, and how to ensure that those elements are present without regard to who technically admits the patient to services. In this regard, it is the department's position, as is TXMHMR, that a medical examination by a physician is necessary to identify any underlying conditions that may be present as psychiatric symptoms, and to identify any underlying conditions that may require immediate treatment, or affect the treatment of psychiatric illness. Treatment that is based on a psychiatric assessment without benefit of a medical examination poses a significant risk to the patient, and constitutes a significant risk management issue to health care providers and mental health professionals. The department, as does TXMHMR, supports and encourages a multidisciplinary approach to patient intake and admission.

COMMENT: Concerning Section 12-10.3.1.1, as regards voluntary inpatient mental health services, a commenter recommended for the sake of consistency in the rules, that throughout the rules all assessments or examinations be done on a "face-to-face" basis with the patient.

RESPONSE: The department agrees and has incorporated this requirement throughout the final rules.

COMMENT: Concerning Section 12-10.3.1, four commenters expressed concern that the

proposed rules did not allow for emergency situations in which a physician is not readily available.

RESPONSE: The department disagrees but has revised the language to clarify voluntary admission of patients. The licensing standards require a physician be present or available within 30 minutes to evaluate the patient for an emergency medical condition.

COMMENT: Concerning Section 12-10.3.1.3, as regards oral requests for release, a commenter recommended that the provision be changed to require a patient or responsible party's signature.

RESPONSE: The department disagrees, as the proposed and final rules parallel the TXMHMR final rules; however, the department has added clarifying language regarding the documentation of a request for release.

COMMENT: Concerning Sections 12-10.3.1.5 and 12-10.3.1.5.2, as regards voluntary inpatient mental health services, the department and TXMHMR both received numerous comments about the provisions in their rules regarding voluntary admissions and emergency detention.

RESPONSE: The department has included language adopted by TXMHMR in the department rules. The department's language deviates from TXMHMR only in use of the terminology for emergency detention.

COMMENT: Concerning Section 12-10.4, as regards emergency detention, a commenter stated the proposed language addresses emergency detention, but not emergency admission.

RESPONSE: The department considers the proposed language to be acceptable. An emergency detention is a special type of statutory procedure, and by its nature, if carried out as prescribed by the Health and Safety Code, Chapter 573, is a type of emergency entry into a hospital.

COMMENT: Concerning Section 12-10.4.1, as regards emergency detention, a commenter asked that the section be revised to require that a person temporarily admitted for emergency detention must be examined by a physician as soon as possible within 24 hours after apprehension.

RESPONSE: The department disagrees. The language must be a recommendation because of the narrow range of rulemaking granted to the board in the licensing law.

COMMENT: Concerning Section 12-10.4.2, as regards emergency detention, a commenter suggested that the section be revised to require the verbatim inclusion in the rule of the statutory criteria for emergency admission found in the Health and Safety Code, §573.022.

RESPONSE: The department disagrees. Inclusion by reference is a legitimate device. It provides both economy and accuracy; when the referenced statutory provision changes, the rule does not necessarily have to be amended.

COMMENT: Concerning Section 12-10.4.2, as regards emergency admission, a commenter stated there are no provisions in

the proposed rules to allow for emergency treatment of patients with emergency medical needs, while they may be waiting for a physician evaluation.

RESPONSE: The department believes that any hospital staff physician can attend to a medical emergency without having such a provision in the rules.

COMMENT: Concerning Section 12-11, as regards enforcement of special standards, a commenter believes that the Senate Interim Committee for Health and Human Services directed the state agencies to regulate hospitals providing mental health services so as to protect all patients admitted and treated.

RESPONSE: Due to the narrow scope of rulemaking authority under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, the language in the section stipulates that hospitals licensed by the department should comply with the recommendations of Chapter 12. The department will cite failure or refusal to follow the recommendations and counsel the hospital.

The following comments were received on the "Recommended Patient's Bill Of Rights" (RPBOR) in Attachment A to Chapter 12.

COMMENT: Concerning RPBOR generally, a commenter requested that the department's rules and the TXMHMR rules be identical.

RESPONSE: The board has followed the form and text of the TXMHMR RPBOR to the greatest extent possible. The board has no authority to adopt the exact text of the TXMHMR rule and the board does not have the authority to adopt rules which make continued licensure contingent on the use of the TXMHMR rule. In this area, the board can only make recommendations.

COMMENT: Concerning the introduction to RPBOR, as regards its background, a commenter suggested that the introduction be revised to read, "It is the responsibility of the hospital to make sure the patient has been informed of his rights, and the hospital's responsibility to respect and provide for those rights to maintain licensure."

RESPONSE: The department disagrees. RPBOR is recommended by the board and, as such, may not be used by the department to deny licensure. Also, many of its precepts are not necessary to maintain licensure. However, for these reasons, the department has deleted the language in paragraph #2 of RPBOR.

COMMENT: Concerning Section A(1), as regards the right to have a copy of RPBOR, a commenter requested that this paragraph be expanded to provide that a copy of RPBOR may be provided to the patient's guardian or other person(s) accompanying the patient at the time of admission.

RESPONSE: The department believes that the new language in the final Section 12-8.3 of Chapter 12 and RPBOR adequately addresses the commenter's concern.

COMMENT: Concerning Section A(2), as regards explanation of rights to patients, two commenters recommended that this provision should be revised to recognize that a patient

may not be able to understand the explanation early in the patient's hospitalization.

RESPONSE: The department agrees and has revised the rule to clarify a number of procedural steps in the rights communication process. Language has been added explaining the procedure to be followed in the event the patient refuses to sign RPBOR. Language also has been added clarifying that these rights should be explained to each patient within 24 hours of being admitted to the hospital to receive services. In addition, language has been added recommending staff to later discuss rights with patients who, at the earliest stages of admission, appear incapable of fully comprehending their rights. The changes parallel revisions in the language of the TXMHMR final rules concerning Patient's Bill of Rights.

COMMENT: Concerning Section A(2), a commenter stated that a patient's competence must be determined at the time of admission. The commenter concluded that when patients are not competent, or when there are no competent relatives available or identifiable, an alternative procedure should be outlined.

RESPONSE: Although the department disagrees with the commenter's assumptions about the patient's competency and the competency of the patient's family, etc., the department agrees with the commenter that an alternate procedure should be provided for patients who do not, or can not, understand the explanation of patient rights within the recommended time frame. While only a court can find a person incompetent, the possibility that a person may be too ill to participate in the explanation of rights early in his or her hospitalization is very real. For this reason, the department has revised this provision to recognize that all patients may not be able to understand this information during the early days of hospitalization and to recommend to the hospitals that they periodically attempt to provide the rights explanation until the patient understands or until the patient is discharged or transferred, whichever is earlier.

COMMENT: Concerning Section B(3), as regards patient complaints, the final draft of the Memorandum of Understanding signed by the multi-state agencies has resulted in a need to change portions of Chapter 12, including RPBOR.

RESPONSE: Due to the provisions of the Memorandum of Understanding requiring TXMHMR as the primary agency for receiving complaints, the department has deleted the department information and complaint line telephone number from RPBOR.

COMMENT: Concerning Section C, as regards recommended basic rights for all patients, a commenter noted that the word "Recommended" be deleted from the heading of this section in order to prevent misunderstanding regarding compliance with the basic rights requirement.

RESPONSE: The department maintains that the hospital licensing standards cannot exceed Medicare requirements, therefore the language has been adopted as proposed, including the word "Recommended."

COMMENT: Concerning Section C(3), as regards the right to a clean and humane environment, a commenter recommended that this provision be revised to read, "You have the right to a humane treatment environment that provides reasonable protection from harm, and appropriate privacy for personal needs, and to be treated with respect and dignity."

RESPONSE: The department likes the commenter's suggested language because it parallels the language in TXMHMR's final rules; accordingly the final wording reflects the suggestion.

COMMENT: Concerning Section C(4), as regards the right to appropriate treatment, a commenter suggested that this paragraph be revised to read, "You have the right to appropriate treatment in the least restrictive appropriate setting available."

RESPONSE: The department agrees and has modified the language to reflect better the language found in the Health and Safety Code and the TXMHMR final rules.

COMMENT: Concerning Section C(6), as regards charges for services, a commenter recommended that this paragraph be revised. The commenter's concern centered on the inability of a hospital to provide a patient with a full and accurate account for the "cost of services" at the time of admission.

RESPONSE: The department agrees and has revised the paragraph to recommend the provision of information regarding estimated charges to patients and to identify additional information to which the patient should have access. The revised language parallels the TXMHMR final rules.

COMMENT: Concerning Section C(7), as regards fair compensation for labor performed, a commenter took exception to the requirement to allow the right to fair compensation for labor performed for the hospital in accordance with the Fair Labor and Standards Act. The commenter stated that the work provided by patients is part of their treatment regimen, not labor for the hospital.

RESPONSE: Even though the provision is a recommendation, the department believes that the existing language of the provision correctly states the federal law and, regardless of the department's position, the hospital is bound under the Fair Labor and Standards Act to provide compensation to any patient who performs work for the hospital beyond caring for his or her own immediate surroundings.

COMMENT: Concerning Section C(8), as regards the right to be informed about the hospital's rules and regulations, a commenter noted that not all patients are capable of understanding all hospital rules and regulations concerning conduct and course of treatment prior to admission.

RESPONSE: The department agrees and, diverging from the TXMHMR final rules, has revised the language in Section 12-8.3.2 in Chapter 12 to recognize that all patients may not be able to understand this information prior to admission or at admission and to recommend to hospitals that they periodically

attempt to provide the information until the patient understands, until the patient is discharged, or until the patient is transferred, whichever is earlier.

COMMENT: Concerning Section C(9), as regards the right to maintain personal communications, a commenter suggested this provision be modified to provide the patient with the right to have visitors and to communicate with persons outside the facility within the general rules provided by the facility.

RESPONSE: The department agrees and has revised the provision to further articulate the prohibition of the use of subtle barriers to communication. The revised language parallels the TXMHMR final rules.

COMMENT: Concerning Section C(9), a commenter took exception to the proposed language in the last sentence of this provision as regards the right of a patient to have his or her attorney contact the patient. The objection was based upon the strict federal confidentiality requirements imposed upon chemical dependency treatment programs in return for the receipt of federal funding.

RESPONSE: Although the provision is a recommendation, in the interests of accuracy, to avoid confusion, and to achieve parity with the rules adopted by TXMHMR, the department has not revised the provision.

COMMENT: Concerning Section C(14), as regards the right to refuse certain treatment procedures, a commenter recommended replacement of the term "unusual medications" with the term "unnecessary or excessive medications." The commenter also recommended the deletion of the term "hazardous assessment procedures." The commenter found the terms to be imprecise.

RESPONSE: The department disagrees because it believes that the existing definition in the TXMHMR final rules regarding "unusual medications" is appropriate.

COMMENT: Concerning Section C(17), as regards disclosure of risks and benefits of care, procedures and treatment (informed consent), a commenter recommended that the term "unusual" in reference to medications and treatment be deleted.

RESPONSE: The department disagrees. The terms "unusual medications" and "special treatment procedures" are defined in Section 12-3 of Chapter 12 and adequately address unusual treatment.

COMMENT: Concerning Section C(19), as regards physical restraints, a commenter recommended this provision be revised to include the statutory language regarding restraints.

RESPONSE: The department agrees and has revised the language in the provision. This revision parallels the TXMHMR final rules.

COMMENT: Concerning Section C(20), as regards the right to meet with staff responsible for care, a commenter suggested that this provision be revised to limit the patient's right to know about proposed changes in the professional staff responsible for the patient's care.

RESPONSE: The department disagrees and has not revised the language of this provision because it parallels the TXMHMR final rules.

COMMENT: Concerning Section C(20), a commenter stated that the need for the hospital staff to be identifiable to the patients (i.e., hospital staff wearing name tags) was not addressed in this section.

RESPONSE: The department declines to add language recommending staff identification because the department believes that it is the prerogative of the respective hospitals to set this policy.

COMMENT: Concerning Section D(1), as regards a voluntary patient's request for release from hospital, a commenter requested the language in this provision be changed to require the patient to sign a request for release.

RESPONSE: The department disagrees because it concurs with the TXMHMR final rules which allow for oral request to be treated as effective without a signature.

COMMENT: Concerning Section D(1), a commenter noted that the age of consent for a minor to voluntarily self-admit to a hospital under the Health and Safety Code, §572.001, is 16 years of age, not 18 years as stated in the section.

RESPONSE: The department agrees and has revised RPBOR to reflect 16 years, the correct age for a minor to be able to self admit under the statutory provision cited in the comment.

COMMENT: Concerning Section E(2), concerning the right to call a lawyer or have a lawyer called, a commenter recommended that this provision be revised to narrow the hospital's responsibilities regarding the appointment of an attorney for persons under the Health and Safety Code, Chapter 573, relating to emergency detention. The requested revision should state that the facility is required to provide a telephone for the person to communicate with a lawyer, and the statute does not require the hospital to assist the person in obtaining a lawyer.

RESPONSE: The department agrees and has revised the provision by deleting the reference to the patient's right to have a lawyer appointed; however, the language regarding the availability of a telephone to the patient, or the responsibility placed on the hospital staff to assist the patient if asked to contact a lawyer remains in effect.

COMMENT: Concerning Section E(4), as regards the return of a person discharged from emergency detention to be returned to a suitable place, a commenter questioned the appropriateness and cost to the hospital of making arrangements to transport patients discharged from emergency detention back to where they were picked up, or to their home in Texas, or to another suitable place.

RESPONSE: The requirement for the hospital to make arrangements is found in the Health and Safety Code, §573.024. The statute also requires the county in which the patient was apprehended to pay for the transportation.

In addition, the department made minor editorial changes to Chapter 12 and the Recommended Bill of Rights for clarification.

The commenters generally were for the adoption; however, they had questions, recommendations, and concerns regarding specific provisions in the amendment.

Comments were received from the following: Texas Hospital Association; Texas Society of Psychiatric Physicians; Board of Vocational Nurse Examiners; Texas Psychological Association; Shannon Medical Center; Capital Area Psychological Association; Palo Duro Hospital; Memorial Medical Center of East Texas; Hospital Licensing Advisory Council; and department staff.

The amendment is adopted under the Health and Safety Code, §241.026, which provides authorization for the Texas Board of Health to adopt and enforce rules and minimum standards for hospitals relating to staffing by physicians and nurses; hospital services relating to patient care; and fire prevention, safety, and sanitary provisions of hospitals; and §12.001 which provides the Texas Board of Health, with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§133.21. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the rules contained in the department publication effective September 1, 1985, entitled, "Hospital Licensing Standards," as amended through June 1992.

(b) (No change.)

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

Issued in Austin, Texas, on May 19, 1992.

TRD-9206860

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: June 9, 1992

Proposal publication date: January 7, 1992

For further information, please call: (512) 458-7500

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter A. General Rules

• 34 TAC §3.7

The Comptroller of Public Accounts adopts new §3.7, concerning successor liability, with changes to the proposed text as published in

the March 3, 1992, issue of the *Texas Register* (17 TexReg 1597).

During the 70th Legislature, 1987, Second Called Session, §111.020 was added to the Tax Code. This provision made the purchaser of a business or stock of goods liable for tax, penalty, and interest or any other amounts owed the state by the seller of the business or stock of goods under the Tax Code, Title 2. Before this section was added to the Tax Code, the successor's liability provisions were found only in Chapter 151. Section 111.020 has an effective date of July 21, 1987.

Changes were made to subsections (b) and (e) ((f) in the proposed section). Subsection (e) was deleted and the remaining subsections were relettered.

Changes to subsections (b) and (e) ((f) in the proposed section) were to show that the certificate of no tax due or a statement concerning the amount owed by the seller of the business will be issued to the seller. While the purchaser of a business may request that a certificate be issued, the certificate itself or a statement concerning any amounts due will be sent to the seller. This change was made to protect audit confidentiality. The other change to subsection (e) was to put the public on notice regarding the fees required to be collected for the issuance of certificates effective January 1, 1992.

A comment on the section was received from an attorney in Austin. The commenter felt that assessing an amount on a purchaser who purchased an identifiable segment of a business on a proportional amount owed by a seller overall was unfair. It was the commenter's feeling that if the liability of the identifiable segment could not be clearly established from the seller's books and records, then successor's liability should not be assessed. The comptroller concurs with the individual's comments by deleting subsection (e).

The commenter also felt that subsection (d)(4), "all the inventory of a business," should be treated separately per the statutory provision. Since the comptroller has consistently treated "inventory" and "stock of goods" interchangeably, the comptroller did not feel this change was necessary. If a purchaser buys either "all the inventory" or the "stock of goods," successor liability may apply.

The words "successor's liability" which appear in the title were changed to "successor liability."

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.7. Successor Liability: Liability Incurred by Purchase of a Business.

(a) A purchaser of any business or stock of goods is liable for payment of any amount owed the state by the seller under the Tax Code, Title 2. The purchaser must, at the time of purchase, withhold a suffi-

cient amount from the purchase price to pay any amounts due. The amount withheld must equal all tax, penalty, and interest or any other amounts assessed or to be assessed against the seller. The purchaser shall not be liable for an amount greater than the purchase price of the business or stock of goods.

(b) A purchaser's duty to withhold the amount owed by the seller will continue until the seller presents to the purchaser a certificate from the comptroller stating that no tax is due. Failure of the purchaser to withhold and remit to the comptroller the required amount makes the purchaser liable for such amount to the extent of the purchase price.

(c) The purchase price shall include, but not be limited to, monetary consideration, assumption of debt, transfer of property, forgiveness of debt, or issuance of debt instruments.

(d) When determining if a "business" has been or will be sold, the comptroller will examine the transaction to determine what the parties to the transaction intended to buy and sell. The answer in each situation will depend on the type of business involved. A seller may have sold a "business" even when few assets were transferred. Depending on the type of business involved, a "business" may be sold if an owner sells:

- (1) a building, land, furniture, fixtures, inventory, and the right to use the seller's trade name; or
- (2) all the capital assets of a business; or
- (3) the name and goodwill of a business; or
- (4) all the inventory of a business; or
- (5) fixed assets and realty necessary to operate a similar business as the seller at the same location.

(e) A certificate stating the amount due or that no tax is due may be obtained in the following manner. The seller, the seller's assignee, or purchaser must make a written request for the certificate before the sale of the business is completed. The comptroller must issue a certificate to the seller within 60 days after the records are made available by the seller for audit or within 60 days after receiving the written request for the certificate, whichever period expires later, but in any event not later than 90 days after receiving the written request. If any amount is found to be due, it must be paid before the certificate will be issued. Failure of the comptroller to timely issue the certificate to the seller will release the purchaser from any further obligation to withhold an amount from the purchase

price. Effective January 1, 1992, the Government Code, §403.301, requires the comptroller to collect a fee for each certificate issued.

(f) The seller must inform the comptroller in writing of the name and address of the purchaser and must file a final report immediately after the sale of the business.

(g) The collection, refund, and penalty provisions of the Tax Code, Title 2, Subtitle B, apply to payments required under successor's liability. Failure of a purchaser to pay the assessment of successor's liability in a timely fashion or to request a hearing thereon will result in a penalty of 10% as provided by the Tax Code, Title 2, Subtitle B, in addition to any amounts of penalty previously assessed against the seller. Successors cannot challenge the validity of the underlying liability of the predecessor.

(h) The sale of a business or stock of goods by a bankruptcy trustee or by the administrator, executor, or guardian in an estate or probate proceeding is not a sale by a vendor or former owner for purposes of this section and the purchaser will not incur liability hereunder.

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

Issued in Austin, Texas on May 19, 1992.

TRD-9206888
Martin Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Effective date: June 9, 1992

Proposal publication date: March 3, 1992

For further information, please call: (512) 463-4028

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.13

The Texas Youth Commission (TYC) adopts an amendment to §81.13, concerning the selection process of an architect/engineer, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2748).

The amendment to the section is merely the

correction of an error in reference to a previous paragraph.

The change will bring about a more efficient selection process of an architect or engineer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.048, which provides the Texas Youth Commission with the authority to promulgate rules relating to award of contracts for construction.

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

Issued in Austin, Texas, on May 18, 1992.

TRD-9206910 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: June 10, 1992

Proposal publication date: April 17, 1992

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

Placement Planning

• 37 TAC §85.33

The Texas Youth Commission (TYC) adopts an amendment to §85.33, with changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2748).

The amendment to the section will bring about a more efficient parole release process for youth whose parents live in Mexico. The changes merely serve to clarify the meaning of paragraph (1)(A) as well as to specify the name of the form referred to in the subparagraph.

When these youth are returned home on parole, the TYC staff responsible for contacting the Mexican Consulate is no longer centralized placement, but rather the Statewide Reception Center (SRC) transportation and the institutional placement coordinator (IPC).

No comments were received regarding adoption of the amendment.

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

§85.33. Parole of Youth Whose Parents Live in Mexico.

(a) Policy. The Texas Youth Commission (TYC) works with the Mexican Consulate and the United States Immigration and Naturalization Service for parole release of the youth whose parents or closest adult relative live in Mexico. Such youth

are released and returned to their homes on parole status and without parole supervision. Procedures herein apply to all programs releasing TYC youth whose parents live in Mexico.

(b) Rules.

(1) When completion of program criteria has been met, the releasing program information the institutional placement coordinator (IPC) of the pending release. The Statewide Reception Center (SRC) is responsible for notification of appropriate persons within specified time limits.

(A) Thirty days before parole release, the TYC staff of the releasing program:

(i) notifies the appropriate Mexican Consulate of the expected release date so that arrangements can be made for returning the youth home;

(ii) sends notification of parole release to the appropriate authorities, CCF-181, Notification to Juvenile Court;

(iii) completes the parole release packet;

(iv) notifies the assigned parole officer of release arrangements;

(v) sends the family notification of parole release (in both English and Spanish); and

(vi) sends written notice to the Immigration and Naturalization Service in the region.

(B) At least two days before the release, SRC transportation confirms the release date, time, and place with the consulate and the parole office.

(2) On the day of parole release, SRC transportation transports the youth to a place designated by the Mexican Consulate office. The assigned parole officer is present at the designated location.

(3) The youth is left in the care of the consulate and a written receipt for the youth signed by the Mexican Consul General or designee is obtained.

(4) If the release of a youth is canceled for any reason, the releasing program immediately notifies IPC who notifies the Mexican Consulate, Immigration and Naturalization Service, parole officer, and other affected parties.

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

Issued in Austin, Texas, on May 18, 1992.

TRD-9206911 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: June 10, 1992

Proposal publication date: April 17, 1992

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2707

The Texas Department of Human Services (DHS) adopts an amendment to §48.2707, concerning program restrictions, in its Community Care for the Aged and Disabled chapter, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2751).

The justification for the amendment is to make DHS's rules more consistent with those of the Texas Department of Mental Health and Mental Retardation and with legislative intent.

The amendment will function by eliminating United States citizenship as a requirement for In-Home and Family Support Program eligibility.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32 which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on May 20, 1992.

TRD-9206904 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: June 30, 1992

Proposal publication date: April 17, 1992

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

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, July 9, 1992, 10 a.m. The Office of Hearings Examiners will meet at the Texas Department of Agriculture, 4502 Englewood Avenue, Lubbock. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001, et seq. (Vernon 1982) by R. B. Todd Co., Inc. as petitioned by David Stephenson.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: May 21, 1992, 9:24 a.m.

TRD-9207005

State Bar of Texas

Thursday, May 28, 1992, 10 a.m. The Executive Committee of the State Bar of Texas will meet at the Texas Law Center, Room 104, 1414 Colorado Street, Austin. According to the agenda summary, the committee will call the meeting to order; take roll call; reports of: chair of the board; president; president elect; executive director; office of general counsel; meet in executive session, closed pursuant to Article 6252-17(2)(e) (potential and/or pending litigation); executive session, closed pursuant to Article 6252-17(2)(g) (personnel matters); task force delivery of legal services to the poor; report of immediate past president; report of immediate past chair of the board; report of TYLA president; and report of Supreme Court liaison.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78711, (512) 463-1451.

Filed: May 19, 1992, 4:09 p.m.

TRD-9206897

Thursday, May 28, 1992, 1:30 p.m. The Board of Directors of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Room 104, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; give invocation; report of chair of the board; legal assistants division; task force of delivery of legal services to the poor; report of president; report of executive director; office of general counsel; meet in executive session, closed pursuant to Article 6252-17(2)(e) (potential and/or pending litigation); executive session, closed pursuant to Article 6252-17(2)(g) (personnel matters); report from board committees; reports from State Bar Committees/Sections/Divisions; other reports, if any, and remarks from the general public.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78711, (512) 463-1451.

Filed: May 19, 1992, 4:09 p.m.

TRD-9206896

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, May 29, 1992, 9 a.m. The Pricing Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the General Services Commission, Central Services Building, #400-A, 1711 San Jacinto Street, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduce members and guests; discuss approval of minutes

from March 13, 1992 meeting; discuss and recommend action on new services; renewal services; new products; product changes and revisions; and adjourn.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2604.

Filed: May 20, 1992, 1:19 p.m.

TRD-9206937

Texas School for the Blind and Visually Impaired

Thursday, May 28, 1992, 9 a.m. The Board of Trustees Finance Audit Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Room 116, Building 500, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes of last meeting (March, 1992); report from Internal Auditor on Canteen audit; report on legacy budget and fund; update on fiscal year 1993 appropriations; board's role in budget development; and adjourn.

Contact: Susan Houghtling, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 233.

Filed: May 20, 1992, 4:49 p.m.

TRD-9206991

Thursday, May 28, 1992, 9 a.m. The Board of Trustees Personnel/Policy Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Room 110, Building 500, Austin. According to the agenda summary, the committee will call the meeting to order; review of Internal Auditor job descrip-

tion and performance appraisal drafts; review of personnel related items on agenda; and adjourn.

Contact: Susan Houghtling, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 233.

Filed: May 20, 1992, 4:49 p.m.

TRD-9206990

Thursday, May 28, 1992, 9 a.m. The Board of Trustees Curriculum Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Room 205, Building 502, Austin. According to the agenda summary, the committee will call the meeting to order; discuss ESL Plan for assessment; school restructuring; reports on current projects; summary of implementation and training in the independent living curriculum; career development plan; orientation and mobility curriculum; early concepts curriculum; reading; and adjourn.

Contact: Susan Houghtling, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 233.

Filed: May 20, 1992, 4:49 p.m.

TRD-9206989

Thursday, May 28, 1992, 10 a.m. The Board of Trustees of the Texas School for the Blind and Visually Impaired will meet at Room 116, 1100 West 45th Street, Austin. According to the agenda summary, the board will call the meeting to order; presentation by Social Services staff; introduction of graduating students; public comments/open forum; reports from board committees: curriculum, personnel, policy and finance, audit committees; discuss new business (including, but not limited to): consultation with school attorney concerning litigation; discuss superintendent's evaluation; internal auditor's report; discuss approval of minutes of March 27, 1992 meeting; consider 1992-93 school calendar; presentation and consideration of Texas Commission on Human Rights plan for work force diversity; tentative format for auditing ARD/IEP process; policy changes; report on summer school planning; approval of requests for use of facilities by outside groups; summary of consultants' contracts; request for reallocating legacy funds; planning of summer board meeting; discuss career education and its role at TSBVI; report on the Florida study; report from Educational Improvement Council; comments from board members; and adjourn.

Contact: Susan Houghtling, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 233.

Filed: May 21, 1992, 9:42 a.m.

TRD-9207009

Texas Department of Commerce

Thursday, May 28, 1992, 8:30 a.m. The State Job Training Coordinating Council Strategic Planning/Coordination Committee of the Texas Department of Commerce will meet at the Radisson Plaza Hotel, Congress Room, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; report on response to committee requests and action; SJTCC review and comment on the Carl Perkins Vocational Education State Plan; SJTCC review and comment on the Job Opportunity and Basic Skills (JOBS) and supportive services plan modifications; SJTCC review and comment on the employment service plan; briefing on the President's Job Training 2000 Initiative; update on implementation of education coordination policy; and adjourn.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: May 20, 1992, 3:07 p.m.

TRD-9206966

Thursday, May 28, 1992, 8:30 a.m. The State Job Training Coordinating Council Program Policy Committee of the Texas Department of Commerce will meet at the Radisson Plaza Hotel, Congress Room, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; report on response to council requests and action; act on PY92 six percent incentive resource allocation; PY92-93 Title IIA (78%) two-year plan approval; PY92 Title IVC Veterans State Program; PY92 Older Workers Program Policy; briefing on PY91 third quarter performance report; update on offender initiatives; and adjourn.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: May 20, 1992, 3:07 p.m.

TRD-9206967

Thursday, May 28, 1992, 1:30 p.m. The State Job Training Coordinating Council Worker Adjustment Committee of the Texas Department of Commerce will meet at the Radisson Plaza Hotel, Congress Room, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; report on response to committee requests and action; Department of Labor report on Texas rapid response operations; SJTCC review, comment, and approval of PY92 Title III dislocated worker substate plans; update on implementation of PY91 Title III dislocated worker programs; briefing on state application for secretary's national reserve funds; update on state level

Title III staffing; update on defense conversion adjustment grants; and adjourn.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: May 20, 1992, 3:07 p.m.

TRD-9206968

Friday, May 29, 1992, 8:30 a.m. The State Job Training Coordinating Council of the Texas Department of Commerce will meet at the Radisson Plaza Hotel, Capitol Ballroom, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comment; discuss approval of prior minutes; report on response to council requests and action; TAPIC report; SDA Administrators Association report; work force director's report; strategic planning/coordination committee report; (action items: SJTCC review and comment on Carl Perkins Vocational Education State Plan, Job Opportunity and Basic Skills Plan, and the Employment Service Plan); Program Policy Committee report, (action items: PY92 6% incentive resource allocation, Title IIA SDA plan approval, PY 92 Veterans Program, PY92 Older Worker Program); Worker Adjustment Committee report (action item: SJTCC review, comment, and approval of Title III dislocated worker substate plans); Oversight Committee report; (action item: reorganization and sanctions policy); briefing on: a community based initiative of communities organized for public service (COPS)/Metro Alliance of San Antonio; Smart Jobs Plan update; Sunset Advisory Commission activities; and JTPA amendments.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: May 20, 1992, 3:07 p.m.

TRD-9206965

Texas Department of Criminal Justice

Thursday, May 28, 1992, 8:30 a.m. The Board of Pardons and Paroles Executive Committee of the Texas Department of Criminal Justice will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will review and discuss caseload management; process for development of board policies and rules on delegation of authority; parole division staff information and report; discuss approval of minutes of January 23, 1992 meeting; and adjourn.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5408.

Filed: May 19, 1992, 3:01 p.m.

TRD-9206890

Texas State Board of Dental Examiners

Thursday, May 28, 1992, 8:30 a.m. The Texas State Board of Dental Examiners will hold an emergency meeting at the UTHSC-Dental Branch, Houston. According to the complete agenda, the board will call the meeting to order; take roll call; discuss examination procedures and protocol; and meet in executive session to discuss examination security and examination content. The emergency status is necessary as executive session was called to discuss exam security and exam content.

Contact: C. Thomas Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

Filed: May 21, 1992, 9:23 a.m.

TRD-9207000

Saturday, May 30, 1992, 5 p.m. The Texas State Board of Dental Examiners will meet at the UT-Houston Health Science Center, Dental Branch, Houston. According to the complete agenda, the board will call the meeting to order; take roll call; and discuss and vote on exam results.

Contact: C. Thomas Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

Filed: May 19, 1992, 2:38 p.m.

TRD-9206878

Texas Education Agency

Friday-Saturday, May 29-30, 1992, 10 a.m. and 9 a.m. respectively. The Continuing Advisory Committee for Special Education of the Texas Education Agency will meet at the Marriott at the Capitol, 11th Street and IH-35, Austin. According to the agenda summary, on Friday, the committee will discuss approval of minutes; perfection of agenda; hearing officer decisions; mission statement review; regional day school programs; vocational education; student outcomes; update on Office of Special Education Programs visit; and partnerships for assisting Texans with handicaps conference report. On Saturday, the committee will have team meetings and letter writing; discuss Medicaid; reports and letters; and plan for next meeting.

Contact: Shirley Sanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9362.

Filed: May 21, 1992, 8:16 a.m.

TRD-9206994

Monday, June 8, 1992, 8 a.m. The State Textbook Business Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Business Education Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:40 p.m.

TRD-9206955

Tuesday, June 9, 1992, 10:30 a.m. The State Textbook Journalism Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Journalism Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:39 p.m.

TRD-9206954

Tuesday, June 9, 1992, 1 p.m. The State Textbook Driver Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Driver and Traffic Safety Education Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:40 p.m.

TRD-9206956

June 16, 1992, 1 p.m. The State Textbook Fine Arts Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the

complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Fine Arts Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:40 p.m.

TRD-9206957

Wednesday-Thursday, June 17-18, 1992, 8:30 a.m. The State Textbook Science Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104 (Wednesday), and Room 1-100 (Thursday), Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Science Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:40 p.m.

TRD-9206958

Thursday, June 18, 1992, 1 p.m. The State Textbook Trade/Industrial Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Trade/Industrial Education Committee are scheduled to make presentations before members of the committee.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:40 p.m.

TRD-9206959

Monday-Wednesday, June 22-24, 1992, 8 a.m., 9:30 a.m., and 8 a.m. respectively. The State Textbook Language Arts Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Language Arts Committee are scheduled to make presentations before members of the committee. Subject area committee members remain

under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:41 p.m.

TRD-9206960

Wednesday-Friday, June 24-26, 1992, 1 p.m., 8 a.m., 8 a.m. respectively. The State Textbook Industrial Technology Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104 (Wednesday), Room 1-111 (Thursday and Friday), Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Industrial Technology Education Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:41 p.m.

TRD-9206961

Monday-Tuesday, June 29-30, 1992, 8 a.m. The State Textbook Social Studies Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Social Studies Committee are scheduled to make presentations before members of the committee.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:41 p.m.

TRD-9206962

Wednesday, July 1-2, 1992, 8 a.m. The State Textbook Computer Science Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Computer Science Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:41 p.m.

TRD-9206963

Monday, July 6, 1992, 8 a.m. The State Textbook Bilingual Education Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the publishers of textbooks which will be reviewed and recommended for adoption by the 1992 State Textbook Bilingual Education Committee are scheduled to make presentations before members of the committee. Subject area committee members remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 20, 1992, 2:41 p.m.

TRD-9206964

◆ ◆ ◆ Texas Commission on Fire Protection

Wednesday, June 8, 10 a.m., Thursday-Friday, June 9-10, 1992, 8:30 a.m. The Fire Protection Personnel Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Boulevard, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; overview and briefing on agenda; consider and discuss matters from committee and public; discuss and possibly act on request from Waylon Padgett; testing committee report; discuss and possibly act on: recommendations for participation/representation in National Fire Academy programs; proposed rule amendments to §§421.5, 423.1 and 423.203, Chapters 425, 427, 429, 431, 437, 439, 441, 443 eligibility for certification as fire protection personnel; proposed new sections and rule amendments for minimum standards and curricula for fire inspection and fire arson investigation personnel; recommendation for designation of committee member to represent the FFPAC at meetings of the IFSAC; and plan future meeting dates, agenda, and locations.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 873-1700.

Filed: May 19, 1992, 4:41 p.m.

TRD-9206899

◆ ◆ ◆ Office of the Governor-Texas Information and Referral Project

Tuesday-Wednesday, May 26-27, 1992, 9 a.m. The Health and Human Services Dictionary Workgroup of the Information and Referral Project of the Office of the

Governor will meet at the Brown Heatly Building, Room 5501, 4900 North Lamar Boulevard, Austin. According to the complete agenda, on Tuesday, the workgroup will call the meeting to order; discuss approval of minutes; overview of new categorization structure for dictionary; update on definitions received from agencies; identify terms which have been defined by interagency groups; and define terms to be included in dictionary. On Wednesday, the workgroup will continue defining terms; workgroup reports; review and adoption of workplan; and adjourn.

Contact: Carol Price, 201 East 14th Street, Austin, Texas 78701, (512) 463-1782.

Filed: May 19, 1992, 12:23 p.m.

TRD-9206874

◆ ◆ ◆ Statewide Health Coordinating Council

Thursday, May 28, 1992, 1 p.m. The Ad Hoc Bylaws Committee of the Statewide Health Coordinating Council will meet at the Board Room, Brackenridge Hospital, 601 East 15th Street, Austin. According to the complete agenda, the committee will review revised draft bylaws and adopt revised bylaws; discuss individuals with disabilities who need auxiliary aid or services should contact Richard Butler (512) 458-7236 or T.D.D. (512) 458-7708 at least two days prior the meeting.

Contact: Robert Smith, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: May 20, 1992, 4:05 p.m.

TRD-9206980

Thursday, May 28, 1992, 3:30 p.m. The Legislative Committee of the Statewide Health Coordinating Council will meet at the Board Room, Brackenridge Hospital, 601 East 15th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on legislative contact and health planning. Individuals with disabilities who need auxiliary aid or services should contact Richard Butler (512) 458-7236 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Contact: Robert Smith, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: May 20, 1992, 4:05 p.m.

TRD-9206979

Friday, May 29, 1992, 8 a.m. The Plan Development Committee of the Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin. According to the complete agenda, the committee

will hear report from the Commissioner of Health; and consider and possibly act on preliminary 1993-1994 State Health Plan. Individuals with disabilities who need auxiliary aid or services should contact Richard Butler (512) 458-7236 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Contact: Robert Smith, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: May 20, 1992, 4:05 p.m.

TRD-9206982

Friday, May 29, 10 a.m. The Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin. According to the complete agenda, the committee will discuss approval of minutes of April 10, 1992 meeting; consider and possibly act on reports from: Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health; Ad Hoc Bylaws Committee; Legislative Committee; Ad Hoc Committee on Health Concerns of the Elderly; and Plan Development Committee.

Contact: Robert Smith, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: May 20, 1992, 4:05 p.m.

TRD-9206981

Texas Department of Housing and Community Affairs

Wednesday, June 10, 1992, 9 a.m. The Audit Committee of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on the following items: public comment period; Office of the State Auditor, Texas Housing Agency, Report Numbers 1-118, 2-010, 2-031 and 2-064; KPMG Peat Marwick examination; audit of Section 8 Housing Program; State Auditor's report 2-107, Texas Department of Community Affairs; and second auditor report on key performance targets.

Contact: Susan J. Leigh, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: May 20, 1992, 11:56 a.m.

TRD-9206932

Texas Department of Insurance

Wednesday, June 17, 1992, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the Wil-

liam P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1875 concerning the effective date of Texas Citrus and Vegetable Insurance Exchange's exemption from membership in the Texas Workers' Compensation Insurance Facility, formerly the Texas Workers' Compensation Assigned Risk Pool. This hearing was recessed from May 20, 1992 at 1:30 p.m.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: May 20, 1992, 1:47 p.m.

TRD-9206938

Lamar University System

Tuesday, May 26, 1992, 9 a.m. The Board of Regents Policy Manual Review Committee of the Lamar University System will meet at the John Gray Institute, Office of Chancellor Conference Room, 855 Florida Street, Beaumont. According to the complete agenda, the committee will review, discuss and make recommendations on policy manual; and meet in executive session, held under provisions of Vernon's Civil Statutes, Article 6252-17, paragraph 3(g), personnel to discuss duties of various system officers.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: May 20, 1992, 4:08 p.m.

TRD-9206985

Texas Board of Professional Land Surveying

Thursday-Friday, June 4-5, 1992, 9 a.m. The Texas Board of Professional Land Surveying will meet at 7701 North Lamar Boulevard, Suite 400, Austin. According to the complete agenda, the board will discuss approval of minutes of the previous meeting; consider Complaint #91-18 and Complaint #91-6; consider rules 663.13-663.19, Rule 663.11, and Rules 664.1-664.11; hear presentation of complaints; hear committee reports; discuss correspondence; discuss old business;; interviews; and consider new business. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Sandy Smith at 452-9427 two (2) work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: May 21, 1992, 9:25 a.m.

TRD-9207006

Public Utility Commission of Texas

Wednesday, May 20, 1992, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete emergency revised agenda, the commission considered the appeal of Examiner's Order 5 in Docket Number 10883-application of Brazos Electric Power Cooperative, Inc. for certificate of convenience and necessity for proposed generating facilities. The emergency status was necessary as prompt commission action was needed to preserve jurisdiction over the subject matter of the appeal.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 19, 1992, 2:46 p.m.

TRD-9206885

Wednesday, May 20, 1992, 11:30 a.m. The Public Utility Commission of Texas held an emergency meeting at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission considered the appeal of examiner's oral ruling granting City of China's motion to declassify certain documents in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs; establish new fixed fuel factors; and recover its under-recovered fuel expense. The emergency status was necessary as prompt commission action was needed to preserve jurisdiction over the subject matter of the appeal.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1992, 9:44 a.m.

TRD-9206917

Wednesday, June 3, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11145-application of Southwestern Bell Telephone Company for authority to maintain and locate certain records outside the state of Texas.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1992, 3:24 p.m.

TRD-9206972

Monday, June 8, 1992, 1:30 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs, establish new fixed fuel factors, and recover its under-recovered fuel expense.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1992, 3:24 p.m.

TRD-9206969

Tuesday, June 9, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Numbers 6106 and 7205-petition of AT&T Communications of the Southwest, Inc., for emergency and other relief concerning access charges; and petition of general counsel for an inquiry into a flat rate plan for access charges.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 19, 1992, 2:44 p.m.

TRD-9206883

Thursday, June 11, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10757-application of Southwestern Bell Telephone Company to revise Section 5 of the general exchange tariff to add an optional feature for Plexar-I, alternate answering outside systems.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 19, 1992, 2:45 p.m.

TRD-9206884

Monday, June 29, 1992, 1:30 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs, establish new fixed fuel factors, and recover its under-recovered fuel expense.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1992, 3:24 p.m.

TRD-9206970

Wednesday, September 30, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10894-application of Gulf States Utilities Company to reconcile fuel costs, establish new fixed fuel factors, and recover its under-recovered fuel expense.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1992, 3:24 p.m.

TRD-9206971

Texas National Research Laboratory Commission

Wednesday, May 20, 1992, 1:30 p.m. The Texas National Research Laboratory Commission met at the University of Texas Board of Regents System Office, 201 West Seventh Street, Ninth Floor, Austin. According to the emergency revised agenda summary, the commission will convene meeting and take roll call of members; hear chairman's welcome; meet in executive session; reconvene; hear public comment; discuss approval of minutes; administrative reports; standing committee meetings and reports; finance and audit; research and education; governmental affairs; personnel, procurement, and minority affairs; site acquisition and development; reconvene as a full commission; hear public comment; and adjourn. The emergency status was necessary as incorrect address was provided on original notice and minor typographical error was corrected.

Contact: Karen L. Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: May 20, 1992, 10:27 a.m.

TRD-9206920

Sam Houston Bicentennial Birthday Celebration State Commission

Wednesday, June 10, 1992, 11:30 a.m. The Sam Houston Bicentennial Birthday Celebration State Commission will meet at the Austin Hall, Sam Houston State University, Huntsville. According to the complete agenda, the commission will call the meeting to order; introduce new members and guests; discuss approval of minutes from last meeting, April 22, 1992; reports from State Commission members on proposed event sites for 1993; hear executive director report; and plan next meeting date.

Contact: Twila Kirkpatrick, P.O. Box 2419, Huntsville, Texas 77341, (409) 294-3625.

Filed: May 20, 1992, 3:27 p.m.

TRD-9206973

Teacher Retirement System of Texas

Thursday, June 4, 1992, 2 p.m. The Retirees Advisory Committee of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; discuss approval of minutes of March 6, 1992 meeting; need for a managed care network; estimate of financial impact of managed care network; staff recommendation regarding a managed care plan; public comment on staff recommendation; consider staff recommendation; administrative remarks; and adjourn.

Contact: Stanford Blake, 1000 Red River, Austin, Texas 78701-2698, (512) 397-5394.

Filed: May 21, 1992, 10:01 a.m.

TRD-9207012

Friday, June 5, 1992, 9 a.m. The Retirees Advisory Committee will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; report on status of fund; projections for current plan year; projections for current funding period; alternative approaches to additional funding needs; hear public comment regarding additional funding needs; administrative remarks; and adjourn.

Contact: Stanford Blake, 1000 Red River, Austin, Texas 78701-2698, (512) 397-5394.

Filed: May 21, 1992, 10:01 a.m.

TRD-9207011

Texas Property and Casualty Insurance Guaranty Association

Wednesday, May 27, 1992, 9 a.m. The Board of Directors of the Texas Property and Casualty Insurance Guaranty Association will meet at the William P. Hobby Building, Tower One, 12th Floor, 333 Guadalupe Street, Austin. According to the agenda summary, the board will consider and take action on: extension of bridge agreement; designation of check-signing authority; proposed assessment; compensation

packages for employees including claims counsel; claims supervisor-Workers Compensation; claims supervisor-auto and other lines and financial manager; discuss state auditor's May, 1992 review of liquidation division; report an discuss sale of Nation County Mutual charter by the liquidator; meet in executive session on litigation; and discuss PIC/TEIA.

Contact: Sandy Autry, 333 Guadalupe Street, Mail Code 305-1A, Austin, Texas 78701, (512) 322-0223.

Filed: May 19, 1992, 2:51 p.m.

TRD-9206889

Texas Southern University

Tuesday, May 26, 1992, 3 p.m. (Rescheduled from May 27, 1992, 4 p.m.). The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall Room 117, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: May 21, 1992, 9:22 a.m.

TRD-9206996

Texas State Technical College

Saturday, May 23, 1992, 9:30 a.m. The Board of Regents of Texas State Technical College met at the TSTC Amarillo Campus Green Room, Amarillo. According to the revised agenda summary, the board approved reimbursement agreement between TSTI Housing Partnership I, Limited, and Texas State Technical College, Waco.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: May 19, 1992, 11:53 a.m.

TRD-9206871

Texas Turnpike Authority

Thursday, May 28, 1992, 9:30 a.m. The Board of Directors of the Texas Turnpike Authority will meet at the Marriott Park Central Hotel, 7750 LBJ Freeway at Coit Road, Dallas. According to the agenda summary, the board will consider approval of minutes of prior board meeting; meet in executive session with respect to the Dallas North Tollway project; purchase of right-of-way; award of civil engineering design contract; Supplemental Agreement Number

Nine to Contract DNT-78A and progress report on construction of Dallas North Tollway Phase Two; refinancing of the Houston Ship Channel Bridge; Supplemental Agreement Number One to Contract HSC-45; awards for sound consulting contract and toll collection system engineering contract; adoption of administrative rules, procedures, and guidelines for information relating to functions of board of directors and for obtaining private participation in turnpike projects; and hear executive director's report.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: May 20, 1992, 4:15 p.m.

TRD-9206986

University of Texas System, M. D. Anderson Cancer Center

Tuesday, May 26, 1992, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M. D. Anderson Cancer Center will meet at the M. D. Anderson Cancer Center, Conference Room AW7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee will review protocols for animal care and use and modification thereof.

Contact: Anthony Mastromarino, Ph.D., U.T. M.D. Anderson Cancer Center, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3991.

Filed: May 21, 1992, 8:57 a.m.

TRD-9206995

Texas Water Commission

Wednesday, July 8, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Ernest L. Hoelscher's application Number 5412 to divert and use 50 acre-feet of water per annum from an existing, exempt 7.3 acre-foot reservoir on San Diego Creek, tributary of San Fernando Creek, tributary of the Cayo del Grulla, tributary of Baffin Bay, tributary of the Laguna Madre, Nueces-Rio Grande Coastal Basin, to be used for irrigation of land located approximately nine miles west of Alice, Jim Wells County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: May 20, 1992, 9:16 a.m.

TRD-9206905

Wednesday, July 8, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Frank J. and wife, Alva Garcia's Application Number 5413 to divert and use 50 acre-feet of water per annum from an existing, exempt 7.3 acre-foot reservoir on San Diego Creek, tributary of San Fernando Creek, tributary of the Cayo del Grulla, tributary of Baffin Bay, tributary of Laguna Madre, Nueces-Rio Grande Coastal Basin. The water will be used to irrigate 30 acres of land approximately nine miles west of Alice, Jim Wells County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389.

Filed: May 20, 1992, 9:16 a.m.

TRD-9206906

Texas Workers' Compensation Insurance Fund

Wednesday, May 27, 1992, 9 a.m. The Board of Directors of the Texas Workers Compensation Insurance Fund will meet at the Four Seasons Hotel, Ballroom A, San Jacinto and First Streets, Austin. According to the agenda summary, the board will call the meeting to order; review and discuss approval of April 22, 1992 minutes; hear staff reports: financial committee; audit selection report; investments; operational reports: marketing; finance and administration; claims; approval of plan of operation; publications; office space addition; discuss fund/facility relationship; meet in executive session to discuss general counsel services contract; medical cost control contract; underwriting guideline; status of Travelers' contract; fund tax status report; and employee pension plan recommendations.

Contact: Jodie Bowen, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3845.

Filed: May 19, 1992, 1:07 p.m.

TRD-9206873

Regional Meetings

Meetings Filed May 19, 1992

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee held an emergency meeting at 1430 Collier Street, Austin, May 20, 1992, at noon. The emergency status was necessary as this was the only time a quorum of this committee could meet before the full board had their meeting. Decisions needed to be made before the full

board meeting. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9206863.

The Bexar-Medina-Atascosa Counties Water Control District Number One Board of Directors will meet at the District Office, Highway 132, Natalia, May 26, 1992, at 8 a.m. Information may be obtained from John W. Ward, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9206880.

The Bosque, Erath, Hill, Johnson, and Somervell County Education District 21 will meet at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, June 1, 1992, at 7:30 p.m. Information may be obtained from George B. Gilbert, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7995. TRD-9206893.

The Cash Water Supply Corporation will meet at the D. C. Cannon Cafeterium on Business 34, Quinlan, July 23, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9206882.

The County Education District Number Six Board of Trustees will meet at the Brownfield ISD Administration Building, 601 Tahoka Road, Brownfield, May 26, 1992, at 7 p.m. Information may be obtained from Larry R. Throm, 1628 19th Street, Lubbock, Texas 79401, (806) 766-1092. TRD-9206892.

The Edwards County Appraisal District Appraisal Review Board will meet at the New County Annex Building, Rocksprings, May 29, 1992, at 10 a.m. Information may be obtained from Natalie Goggans, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189. TRD-9206881.

The Heart of Texas Region Mental Health and Mental Retardation Center Board of Trustees will meet at 110 South 12th Street, Waco, May 26, 1992, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9206898.

The Hunt County Appraisal District Appraisal Review Board will meet at the Hunt County Appraisal District Board Room, 4801 King Street, Greenville, May 26, 1992, at 9 a.m. Information may be obtained from Liz Holmes, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510. TRD-9206872.

The Kendall County Appraisal District Board of Directors (Budget Subcommittee) held an emergency meeting at 1234 South Main, Boerne, May 21, 1992, at 7:30 a.m. The emergency status was necessary as financial needs to have budget approved. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9206895.

The Kendall County Appraisal District Board of Directors will meet at 121 South Main, Boerne, May 27, 1992, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9206894.

The West Central Texas Council of Governments Executive Committee will meet at 1025 East North 10th Street, Abilene, May 27, 1992, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9206891.

The West Central Texas Council of Governments Area Agency on Aging Citizens Advisory Council will meet at the West Central Texas Council of Governments, Large Conference Room, Abilene, June 4, 1992, at 9:30 a.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9206862.

The West Central Texas Council of Governments Private Industry Council will meet at 1025 East North 10th Street, Abilene, June 4, 1992, at 10 a. m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79601, (915) 672-8544. TRD-9206861.

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Meetings Filed May 20, 1992

The Alamo Area Council of Governments Area Judges will meet at 118 Broadway Street, Suite 420, San Antonio, May 26, 1992, at 11:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9206987.

The Ark-Tex Council of Governments Executive Committee will meet at the Naples Motor Inn Restaurant, Naples, May 28, 1992, at 5:30 p.m. Information may be obtained from Laurie Dean, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9206941.

The Austin Travis County Mental Health and Mental Retardation Center Board of Trustees held an emergency meeting at 1430 Collier Street, Austin, May 22, 1992, at 7 a.m. The emergency status was necessary as this was the only time a quorum of Trustees could meet to discuss item requiring immediate action. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9206993.

The Bandera County Appraisal District Board of Directors will meet at the Appraisal District Office, North End of Ninth Street, Bandera, May 28, 1992, at 5 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (512) 796-3039. TRD-9206912.

The Comal Appraisal District Appraisal Review Board will meet at 430 West Mill Street, New Braunfels, June 3, 1992, at 8:45 a.m. (Revised Agenda). Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9206939.

The County Education District Board of Directors will meet at the Dumas High School Library, Third and Kline, Dumas, May 28, 1992, at 7 p.m. Information may be obtained from Dwain Walker, 7200 I-40 West, Amarillo, 79106-2598, (806) 354-4252. TRD-9206914.

The Heart of Texas Region Mental Health and Mental Retardation Center Board of Trustees will meet at 110 South 12th Street, Waco, May 26, 1992, at 11:45 a.m. (Revised Agenda). Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9206933.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, June 15, 1992, at 8:30 a.m. Information may be obtained from Donna Bailey, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9206983.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise, Athens, June 16-26, 1992, at 8:30 a.m. respectively Information may be obtained from Donna Bailey, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9206984.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, May 27, 1992, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9206913.

The Mason County Appraisal District Appraisal Review Board will meet at 206 Ft. McKavitt Street, Mason, June 16, 1992, at 10 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9206915.

The Mills County Appraisal Review Board will meet at the Mills County Courthouse, Jury Room, Goldthwaite, May 28, 1992, at 9 a.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844-0565, (915) 648-2253. TRD-9206940.

The Nolan County Central Appraisal District Board of Directors held an emergency meeting at the Nolan County Courthouse, Third Floor, Sweetwater, May 22, 1992, at 7 a.m. The emergency status was necessary as this was the only time a quorum could be present. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9206942.

The Pecan Valley Mental Health and Mental Retardation Region Board of Trustees will meet at the Pecan Valley MHMR Region clinical Office, 104 Charles Street, Granbury, May 27, 1992, at 9 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9206919.

The Southwest Millam Water Supply Corporation Board met at 114 East Cameron, Rockdale, May 25, 1992, at 7 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9206988.

The West Central Texas Council of Governments Overall Economic Development Program Committee will meet at 1025 East North 10th Street, Abilene, May 29, 1992, at 10 a.m. Information may be obtained from Alison Benton, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9206918.

The West Central Texas Municipal Water District met at 410 Hickory Street, Abilene, May 22, 1992, at 9:30 a.m. (Revised agenda). The Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9206934.

Meetings Filed May 21, 1992

The Alamo Area Council of Governments Planning and Program Development will meet at 118 Broadway, Suite 420, San Antonio, May 26, 1992, at 11 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9206997.

The Alamo Area Council of Governments Board of Directors will meet at 118 Broadway, Suite 420, San Antonio, May 26, 1992, at 1 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9207010.

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee will meet at 1430 Collier Street, Austin, May 27, 1992, at noon. (Revised agenda. Rescheduled from May 20, 1992). Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9207013.

The Brazos Valley Development Council Bootstrap/Family Self-Sufficiency Coordination Body will meet at the Council's Office, 3006 East 29th Street, Door Two, Bryan, May 28, 1992, at 9 a.m. Information

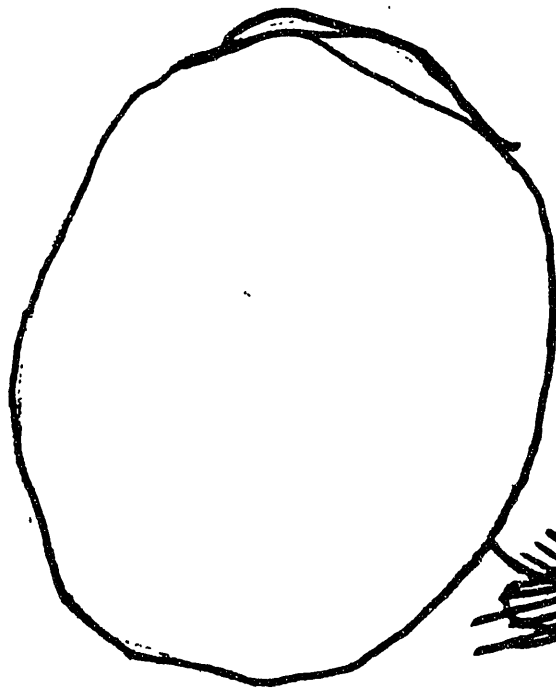
may be obtained from Sandy Shumaker, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9207004.

The Golden Crescent Regional Planning Commission Board of Directors will meet at the GCRPC Board Room, Regional Airport, Building 102, Victoria, May 27, 1992, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9207003.

The Pecan Valley Mental Health and Mental Retardation Region Board of Trustees will meet at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, May 27, 1992, at 9 a.m. (Revised agenda). Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9207014.

The Region VIII Education Service Center Board of Directors will meet at FM 71 and FM 69, Dunhams Farm, Sulphur Springs, May 29, 1992, at 11:30 a. m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456, (903) 572-8551. TRD-9206998.

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Name: Stacey Owen
Grade: 3
School: Springridge Elementary, Richardson

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Notice of Contested Case Hearing Number 298

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not a permit should be issued to Reynolds Metals Company (the Applicant) to replace an existing inside oven spray and to increase the facility's production capacity from 2,217,000,000 to 2,310,000,000 cans per year. The facility is located at 10000 North Loop East, Houston, Texas 77008.

Deadline For Requesting To Be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the Applicant and the TACB Staff. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to Hearings Examiner Bill Ehret and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753 by 5 p.m. on Wednesday, June 3, 1992. The Examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The examiner will decide on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference at 1:30 p.m. on Wednesday, June 17, 1992, at the TACB Regional office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401. At this conference, the examiner will consider any motions of the parties, but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Time and Place of Hearing. The examiner has set the hearing to begin at 1:30 p.m. on Monday, July 6, 1992, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753.

What The Applicant Must Prove. This hearing is a contested case hearing under Section 13 of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. The Applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of the Texas Clean Air Act, §382.0518, Chapter 382, Health and Safety Code (the Act), and the TACB Rule 116.3. These requirements include compliance with all applicable TACB and federal regulations, including the requirement that the proposed facility will use the best available control technology

considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Public Attendance and Testimony. Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512) 908-1770 a day or two prior to the prehearing conference and the hearing date in order to confirm the settings, since continuances and changes in the location of the hearing are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Hearings Section of the TACB Legal Division at (512) 908-1770 to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony. Persons with disabilities who have special communications or other accommodation needs who are planning to attend the meeting should contact the agency at 1 (512) 908-1815. (Requests should be made as far in advance as possible.)

Information About the Application and TACB Rules. Information about the application and copies of the TACB's Rules and Regulations are available at the TACB Regional Office located at 5555 West Loop, Suite 300, Bellaire, Texas 77401, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753, and at the Houston City Hall office, located at 901 Bagby, Houston, Texas 77002.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.0291, 382.030, 382.031, 382.0518, and 382.056 and TACB Procedural Rules 103.11(3), 103.31, and 103.41.

Issued in Austin, Texas, on May 18, 1992.

TRD-9206849 William R. Campbell
Executive Director
Texas Air Control Board

Filed: May 19, 1992

For further information, please call: (512) 908-1451

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Texas Bond Review Board

Bi-Weekly Report on the 1992 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of May 2, 1992-May 15, 1992.

Total amount of state ceiling remaining unreserved for the \$242,886,000 subceiling for qualified mortgage bonds under the Act as of May 15, 1992: \$96, 873,378.

Total amount of state ceiling remaining unreserved for the \$151,803,750 subceiling for state-voted issues under the Act as of May 15, 1992: \$51,803, 750.

Total amount of state ceiling remaining unreserved for the \$65,058,750 subceiling for qualified small issues under the Act as of May 15, 1992: \$26,008, 750.

Total amount of state ceiling remaining unreserved for the \$43,372,500 subceiling for residential rental project issues under the Act as of May 15, 1992: \$11,107,500.

Total amount of state ceiling remaining unreserved for the \$364,329,000 subceiling for all other bonds requiring an allocation under the Act as of May 15, 1992: \$33,064,000.

Total amount of the \$867,450,000 state ceiling remaining unreserved as of May 15, 1992: \$218,857,378.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from May 2, 1992-May 15, 1992: Waco IDC, R&B Development, Inc., IRBs, \$1,750,000; Brownsville IDC, Rich Sea-Pak Corporation, IRBs, \$8,500,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from May 2, 1992-May 15, 1992: Greater East Texas Higher Education Authority, Inc., Eligible Borrowers, Student Loan Bonds, \$50 million; Houston HFC, Eligible Borrowers, Mortgage Credit Certificates, \$30 million; Arlington HFC, Eligible Borrowers, Mortgage Credit Certificates, \$19,629,075; Mesquite HFC, Eligible Borrowers, Mortgage Credit Certificates, \$10,148,400; Brazos River Harbor Navigation District of Brazoria County, Texas, The Dow Chemical Company, Waste Water and Pollution Control, \$50 million; Brazos Higher Education Authority, Inc., Eligible Borrowers, Student Loan Bonds, \$50 million; Angelina and Neches River Authority, Champion International Corporation, Solid Waste Disposal, \$5,670,000.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from May 2, 1992-May 15, 1992: Gulf Coast Waste Disposal Authority, GeneSyst International, Solid Waste, \$17 million; South Central Texas IDC, Jacobson Manufacturing Company, IRBs, \$6 million.

Following is a comprehensive listing of applications which released a portion or their reserved amount pursuant to the Act from May 2, 1992-May 15, 1992: Arlington HFC, Mortgage Credit Certificates, Released-\$3.00; Angelina and Neches River Authority, Champion International Corporation, Released-\$4,330,000.

Issued in Austin, Texas, on May 18, 1992.

TRD-9206809 Tom K. Pollard
Executive Director
Texas Bond Review Board

Filed: May 18, 1992

For further information, please call: (512) 463-1741

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Texas Department of Commerce

Request for Proposal

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300, the Texas Department of Commerce (Commerce) announces a request for proposals (RFP) to develop courseware, deliver training workshops, and provide follow-up technical assistance to Job Training Partnership Act (JTPA) service delivery area (SDA) staffs, Private Industry Council (PIC) administrators and board members, and chief elected officials (CEOs) in Texas.

The department has issued this request for proposals in order to select one or more entities to provide technical assistance and training to workshop participants. This program is intended to be designed around a competency-based adult education model to support the local participant training effort. Training offerings must be developed for two training levels: core and advanced. The training subjects include the following general areas: JTPA structure/principles; JTPA administration/policy; fiscal/contracts; client services; partnerships/community relations; MIS/computers/statistics/research.

Detailed information regarding the project format is set forth in the request for proposal instructions which will be available on May 20, 1992 at the following location: Texas Department of Commerce, Work Force Development Division, First City Centre, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711.

The deadline for receipt of proposals in response to this request will be Friday, June 19, 1992 at 4 p.m. (CST). Responses received after this deadline will not be considered. A bidders' conference will be held at the Texas Department of Commerce at the previous address on June 2, 1992, from 1-4 p.m.

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the materials provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This REP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserved the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact: Gwen Marlin, Texas Department of Commerce, Work Force Development Division, First City Centre, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711, (512) 320-9852.

Issued in Austin, Texas, on May 20, 1992.

TRD-9206930 Cathy Bonner
Executive Director
Texas Department of Commerce

Filed: May 20, 1992

For further information, please call: (512) 320-9666

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Texas Economic Development Corporation

**Telecommunications Industry Study
Request for Proposal**

Purpose. The Texas Economic Development Corporation (TEDC) announces a request for proposal (RFP) from qualified companies or organizations for a study of the

telecommunications industry in Texas. The purpose of this study is to provide planners and policy makers in the public and private sectors with a thorough, objective analysis of the telecommunications infrastructure Texas needs to compete effectively in economic development, and how that infrastructure can be achieved.

The offeror selected to prepare the study must demonstrate the necessary qualifications and experience listed in the "Qualifications" section, and will be required to perform the various services and generate the reports listed in the "Scope of Services" section. The acceptance of an offer by the TEDC, made in response to this request, will be based on demonstrated competence, knowledge and qualifications of the offeror and reasonableness of the offeror's proposed fee, in addition to the following other factors described. No General Revenue funds will be used to pay for this study.

Scope of Services. The successful candidate will be required to produce a study which accomplishes these three major objectives: define and describe the telecommunications infrastructure Texas needs in order to be competitive in developing the state's economy over the next 10 to 15; discuss the aggregate impact on the state economy of developing this infrastructure and identify, to the extent possible, particular sectors which would be impacted positively or negatively; describe how this competitive infrastructure could be accomplished, with reference to capital investment requirements, regulatory policy, and legislative issues.

The successful offeror will render the following services and reports: prepare an interim or draft report for review by the TEDC and/or the Texas Department of Commerce (Commerce) staff; prepare a final report, incorporating TEDC/Commerce staff comments, for public release; present the study's results to the TEDC/Commerce staff and other interested parties.

The offeror's staff will accumulate and analyze all data that is required to prepare the study. Commerce is not expected to provide any staff time to the offeror, other than that time used to review the offeror's draft report. The draft report will be due by mid-October, within 75-90 days after the offeror begins work on the study. (It is anticipated that if a contract is awarded, it will be awarded in July, with the contractor expected to begin work immediately.) The TEDC and Commerce will be allowed two weeks for review and comment after receipt of the draft report. The final report must be delivered to the TEDC within 21 days after the comment period ends, or about mid-November.

The presentation of the study's findings will take place in Austin. The place, date, and time will be determined by the TEDC as mutually agreed to by both parties.

Qualifications. Each company or organization submitting an offer must present evidence of, or otherwise demonstrate to the satisfaction of the TEDC that such entity: has previous experience in industry and public policy research; has a thorough knowledge of the telecommunications industry in general and the Texas telecommunications industry in particular; owns or has access to existing database(s) on the Texas telecommunications industry infrastructure; can complete the necessary research and analysis, and deliver the specified products within the required time frame.

Instructions. Please provide evidence of the previous mentioned qualifications and a proposal which includes: a detailed description of the plan of action to accomplish the requirements described in the "Scope of Services," including data sources and methodology proposed for use; a resume or vita for each staff member who will be assigned to work on this project; the proposed total amount for providing the desired services; the geographical location of the offeror's principal place of business and/or office where services are to be performed.

Conflict of Interest. The offeror shall identify any officer or employee of the TEDC or Commerce who has a financial interest, directly or indirectly, in the offeror's firm or who is related within the second degree of consanguinity (blood) or affinity (marriage) to a person having such a financial interest, together with a full disclosure of the nature of such financial interest, and the relationship if applicable. If there is no such person, the offeror shall so state in the proposal submitted in response to this RFP. Governmental entities are exempt from completing this section.

Prior State Employment. The offeror shall disclose whether any of the personnel whom the offeror proposes to use in performing the requested services have been employed by an agency of the State of Texas at any time during the two years proceeding the date of submission of this proposal. If such employment has existed, the offeror shall disclose the agency and the nature of the previous employment with such agency; the date of termination of the employment; and the annual rate of compensation for the employment at the time of termination. If such employment has not existed then the offeror shall so state in the proposal.

Other. The TEDC reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. Selected candidates may be asked to make oral presentations to the TEDC and/or Commerce staff. The TEDC is under no legal obligation to enter into a contract with any offeror on the basis of this request and intends any material provided herein only as means of identifying the scope of services requested.

Neither the TEDC nor the State of Texas assumes any responsibility for expenses incurred in preparing responses to this solicitation. Responses should be sent to: Susan M. Tully, Research and Planning Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, Phone: (512) 320-9667, Fax: (512) 320-9475.

Your response must be received no later than noon on Monday, June 15, 1992.

Responses received after this date and time will not be considered.

Issued in Austin, Texas, on May 13, 1992.

TRD-9206848 Alan R. Kahn
President
Texas Economic Development Corporation

Filed: May 19, 1992

For further information, please call: (512) 320-9666

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Texas Department of Health
Application for Preventive Health Block Grants

Under the authority of the Omnibus Budget Reconciliation Act (Act) of 1981, the Texas Department of Health (TDH) is making application to the U.S. Public Health Service for funds to continue the preventive health and health services block grants during federal fiscal year (FFY) 1993.

A FFY 1993 report of intended expenditures and 1991 annual report has been prepared by TDH for the block grant as required by the Act. Prior to the preparation of this report, public hearings were held within TDH's public health regions, and public comments received at these hearings have been included in the report. The report consists of statements of compliance and assurances, program need, goals, objectives, activities/services, reports/data, criteria for fund distribution, and FFY 1991 accomplishments.

The report is available for public review and comment by any person (including any federal, state, local, or other public agency) and may be viewed at the Texas Department of Health, Grants Management Division, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7470 and at the following TDH regional offices: Public Health Region 1, 2408 South 37th Street, Temple, Texas 76504, (817) 778-4066; Public Health Region 2, 1109 Kemper Street, Lubbock, Texas 79403, (806) 744-3577; Public Health Region 3, 6090 Surety Drive, Suite 115, El Paso, Texas 79997 (915) 779-7783; Public Health Region 4, 10500 Forum Place, Suite 200, Houston, Texas 77036, (713) 995-1112; Public Health Region 5, 2561 Matlock Road, Arlington, Texas 76015, (817) 460-3032; Public Health Region 6, 1015 Jackson Keller Road, San Antonio, Texas 78213, (512) 342-3300; Public Health Region 7, 1517 West Front Street, Tyler, Texas 75702, (214) 595-3585; Public Health Region 8, 601 West Sesame Drive, Harlingen, Texas 78550, (512) 423-0130.

In addition, the report may be viewed at the following local health departments: Angelina County and Cities Health District, 202 South Bynum, Lufkin, Texas 75901 (409) 632-1372; Corpus Christi-Nueces County Public Health District, 1702 Home Road, Corpus Christi, Texas 78416, (512) 851-7200; Grayson County Health Department, 515 North Walnut, Sherman, Texas 75090, (214) 893-0131; Harris County Health Department, 2501 Dunstan, Houston, Texas 77005, (713) 526-1841; Laredo (City of) Health Department, 2600 Cedar Street, Laredo, Texas 78040, (512) 723-2051; San Angelo-Tom Green County Health Department, 2 City Hall Plaza, San Angelo, Texas 76903, (915) 657-4214; San Antonio Metropolitan Health District, 332 West Commerce Street, San Antonio, Texas 78285, (512) 299-8780; Texarkana-Bowie County Family Health Center, 902 West 12th Street, Texarkana, Texas 75501, (214) 792-8211; Victoria City-County Health Department, 107 West River Street, Victoria, Texas 77902, (512) 578-6281; Wichita Falls-Wichita County Public Health Department, 1700 Third Street, Wichita Falls, Texas 76301, (817) 761-7800.

Written comments regarding this block grant may be sent no later than June 5, 1992 (postmark date), to Julian M. Kosh, Director, Grants Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

Issued in Austin, Texas, on May 19, 1992.

TRD-9206868

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: May 19, 1992

For further information, please call: (512) 458-7470

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Texas State Library and Archives Commission
Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, Chapter 441, Subchapter J, for the purpose of accepting nominations to fill vacancies on the Local Government Records Committee.

Nominations will be accepted through June 29, 1992, to fill the position of city secretary.

A nomination may be made by an organization that represents the type of officer it nominates and that has 50 such officers as members. In choosing between two or more nominees, the director and librarian will give preference to a nomination or nominations received from organizations whose membership consists primarily of the type of officer to be nominated.

Nominations should be sent to William D. Gooch, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Issued in Austin, Texas, on May 18, 1992.

TRD-9206879

Raymond Hilt
Assistant State Librarian
Texas State Library

Filed: May 19, 1992

For further information, please call: (512) 463-5440

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Public Utility Commission of Texas
Notice of Intent of File Pursuant to PUC Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the City of Midland, Midland.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the City of Midland Pursuant to Public Utility Commission of Texas Substantive Rule 23.27(k). Tariff Control number 11188.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the City of Midland. The geographic service market for this specific service is the Midland area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 15, 1992.

TRD-9206825 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 18, 1992

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

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The University of Texas System
Consulting Services-Award of Contract

The University of Texas System files this statement of award of contract for consulting services in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, on May 15, 1992, U. T. System entered into a contract for consulting services in response to a consultant proposal request published in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7761).

Project Description. Provide the University of Texas System Administration managerial, technical and on-site working operational expertise in the development and implementation of review/study on revenue generated from natural gas production.

Such services to include: familiarization with the physical operation of the plant through the study of maps, flow diagrams, and operating statements; familiarization with applicable lease agreements, settlements statements, gas contracts, and processing agreements; compilation of operation data and calculation of monthly plant balances for the duration of the review period; on-sit training and supervision of University Lands Accounting Office personnel conducting audits; prepare audit report/January 31, 1993; prepare audit manual satisfactory for use by University Lands Accounting Office personnel.

Name and Address of Consultant. Natural Gas Associates of Colorado, One Barclay Plaza, 1675 Larimer Street, Suite 740, Denver, CO 80202-1523.

Value of Contract and Effective Date. The value of this contract shall not exceed \$36,000. The term of this contract shall commence on May 15, 1992, and shall expire April 30, 1993, unless extended or earlier terminated as provided in the contract.

Due Date of Final Report. All reports, findings and related documents thereto are due upon completion of the contract.

Issued in Austin, Texas, on May 18, 1992

TRD-9206839 Arthur H. Dilly
Executive Secretary of the Board
The University of Texas System

Filed: May 18, 1992

For further information, please call: (512) 499-4402

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Texas Water Commission
Notice of Application For Waste
Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 5th-May 15, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any

such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

City of Bertram; the proposed wastewater treatment facility; evaporation and irrigation sites are west of Bertram on the south side of State Highway 29, approximately 1.7 miles west of the intersection of State Highway 29 and FM Road 1174 North in Burnet County; amendment; 11669-01.

Cogen Power; an electricity and steam generating facility; the plant site is east of State Highway 87 and the Turning Basin, west of the Sabine-Neches Canal, in the Great Lakes Carbon Corporation Plant in the City of Port Arthur in Jefferson County; new; 03449.

Fort Bend County Municipal Utility District Number 34; the wastewater treatment facilities are approximately 2.1 miles east-northeast of the intersection of FM Roads 1093 and 723 in Fort Bend County; renewal; 12298-01.

Guaranty Bank; the wastewater treatment facilities are approximately two miles northwest of the intersection of FM Road 21 and State Highway 11, approximately 3.5 miles southeast of the intersection of FM Road 21 and 127 in Camp County; renewal; 13229-01.

City of Hillcrest Village; the wastewater treatment facilities are on the west bank of Mustang Bayou, approximately 0.5 mile west of the intersection of County Road 326 and County Road 155 in Brazoria County; renewal; 10420-01.

City of Houston; the Clinton Park Wastewater Treatment Facilities; the plant site is at 9030 Clinton Drive in the City of Houston in Harris County; renewal; 10495-010.

City of Houston; the Beltway Wastewater Treatment Facilities; the plant site is approximately 1,700 feet north of Bellaire Boulevard and 3,400 feet west of Roark Road in the City of Houston in Harris County; renewal; 10495-111.

Jack H. Kempernaar; the dairy and feedlot operation; the dairy and feedlot are located along County Road 2346 at the intersection of County Road 2346 and County Road 2333, approximately 1.5 miles southwest of the intersection of FM Road 3105 and FM Road 269 in Hopkins County; amendment; 03188.

City of Orange; the Jackson Street Wastewater Treatment Facilities; the plant site is at 402 South 10th Street,

between Jackson Street and Polk Avenue and approximately 1,800 feet west of FM Road 1006 (Border Street) in Orange County; renewal; 10626-01.

Prairie View A&M University; the wastewater treatment facilities are; in the northwest section of the Prairie View A&M campus at a point approximately 1.0 mile north of U.S. Highway 290 in Waller County; renewal; 11275-01.

City of Robinson; the South Plant Wastewater Treatment Facilities; the plant site is adjacent to Crow Creek, approximately 2,000 feet southwest of the intersection of Old Robinson Road and U.S. Highway 77 in the City of Robinson in McLennan County; renewal; 10780-03.

Stevens Water Company; the wastewater treatment facilities; are approximately 500 feet east of U.S. Highway 59, approximately one mile south of the intersection of U.S. Highway 59 and FM Road 1988, approximately three miles south of the intersection of U.S. Highway 59 and State Highway 190 in Polk County; renewal; 11697-01.

Texas Municipal Power Agency; the Gibbons Creek Steam Electric Station; is adjacent to Gibbons Creek Reservoir, approximately 2.5 miles north of the State Highway 30/FM 244 intersection in the Town of Carlos in Grimes County; renewal; 02120.

Pristine Systems; a Type V (incinerator) municipal solid waste management facility; the facility will process medical wastes, special wastes and on-site generated municipal solid waste. The site is to be on a 25 acre site approximately two miles north-northwest of the intersection of U.S. Highway 183 and State Highway 202 in Refugio County; (28 degrees 22.50 feet north, 97 degrees 17.90 feet west); new; MSW2177-05.

Issued in Austin, Texas, on May 18, 1992.

TRD-9206850

Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: May 19, 1992

For further information, please call: (512) 463-7906



1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

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