

# Texas Register

Volume 17, Number 60, August 11, 1992

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**Information Available:** The ten sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows: 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "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 Administrative 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).

## Texas Register Art Project

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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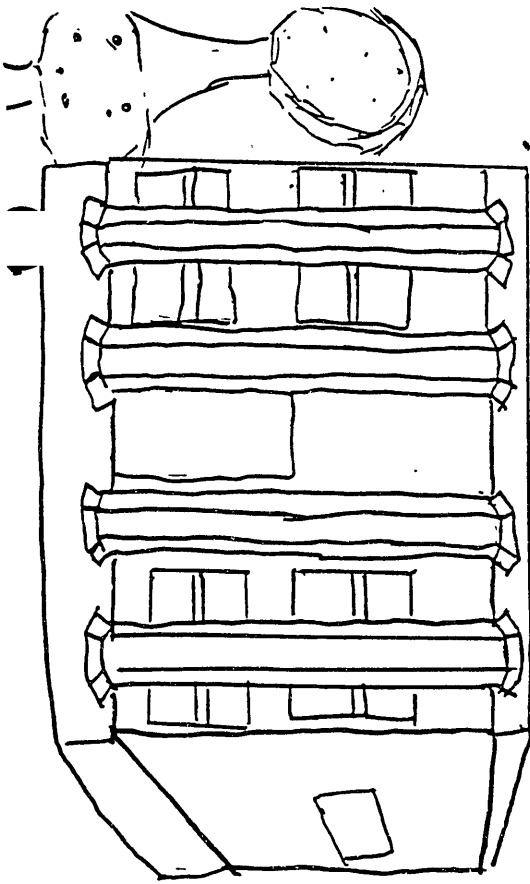
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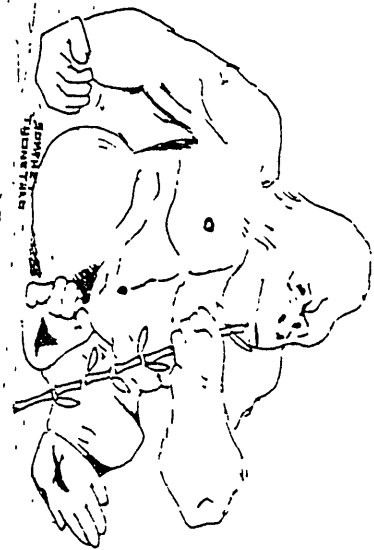
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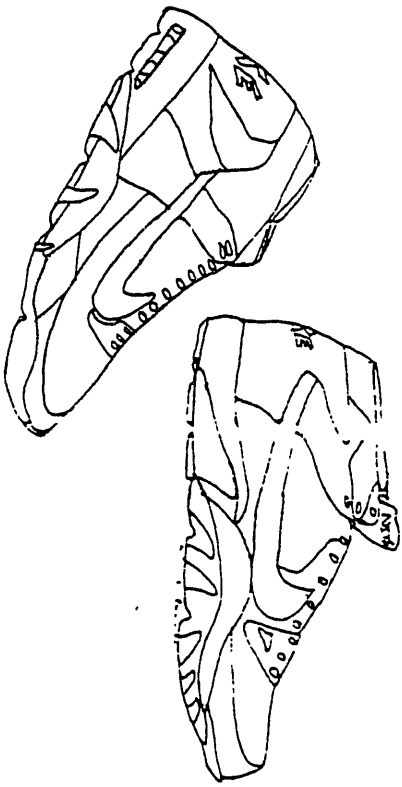
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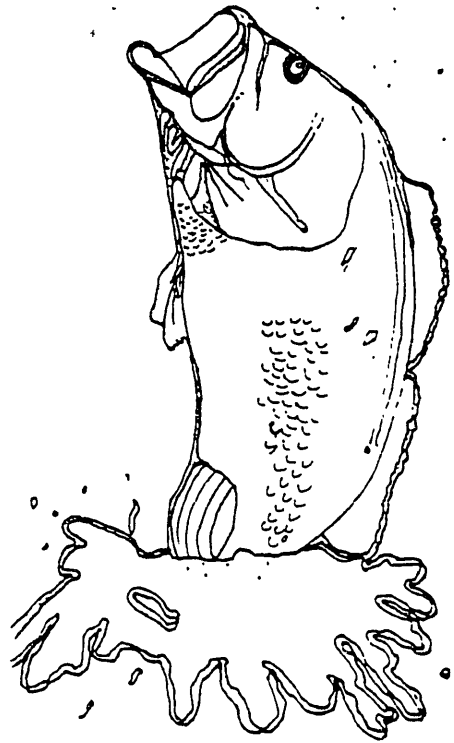
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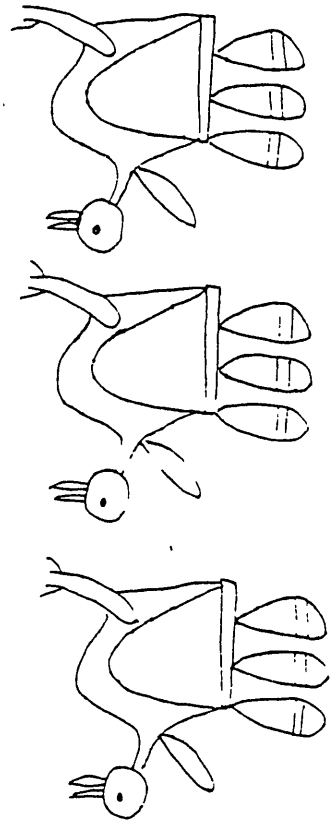
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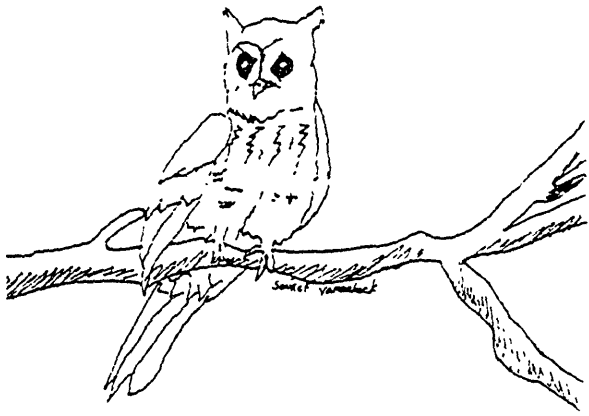
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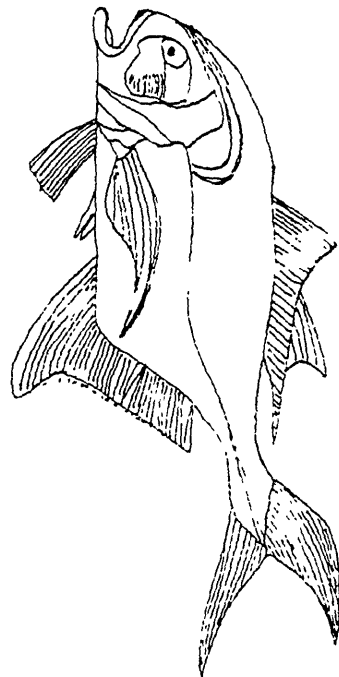
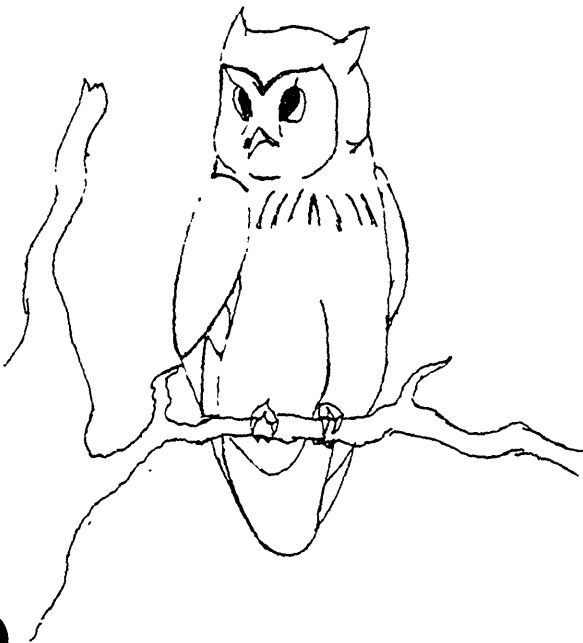
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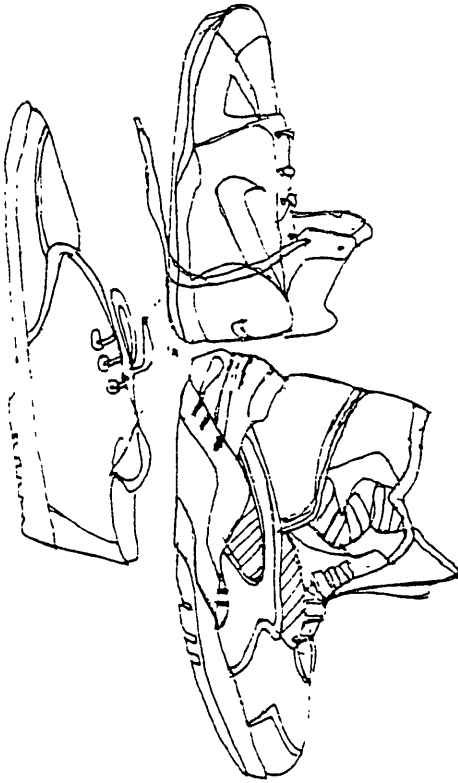


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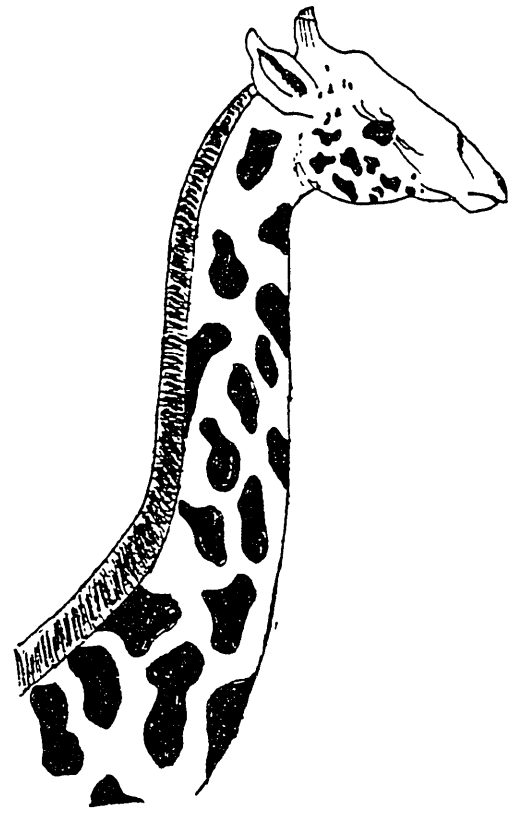
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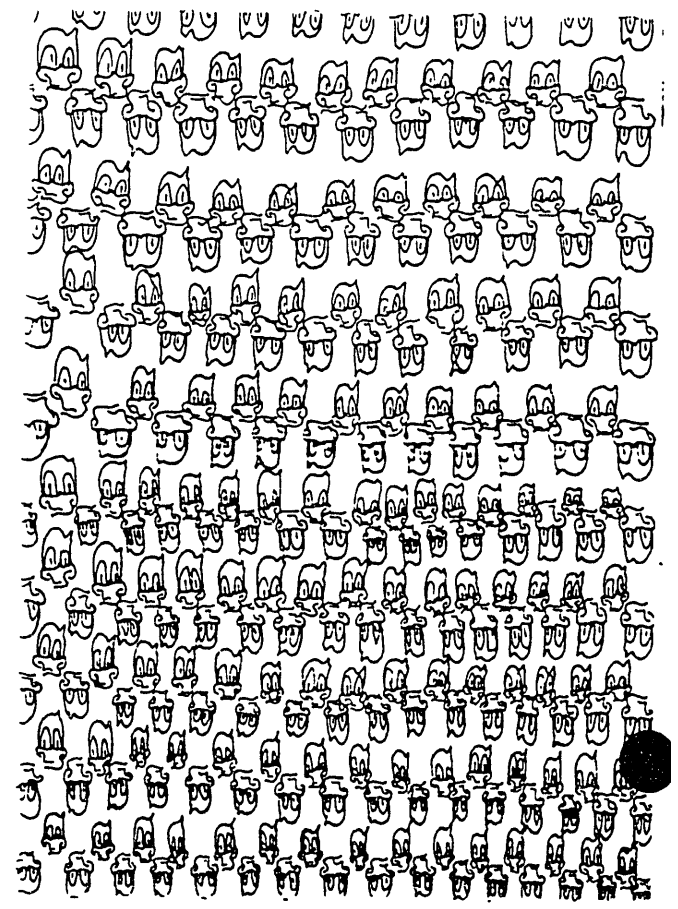
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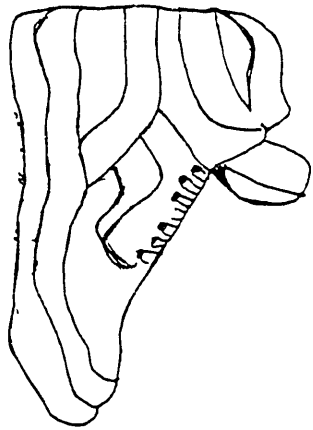
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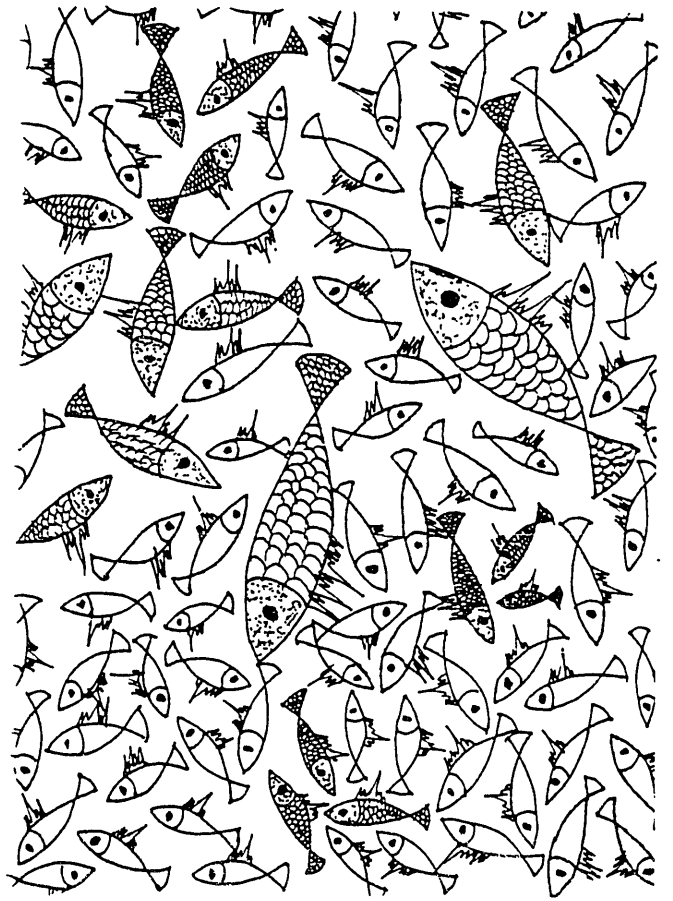
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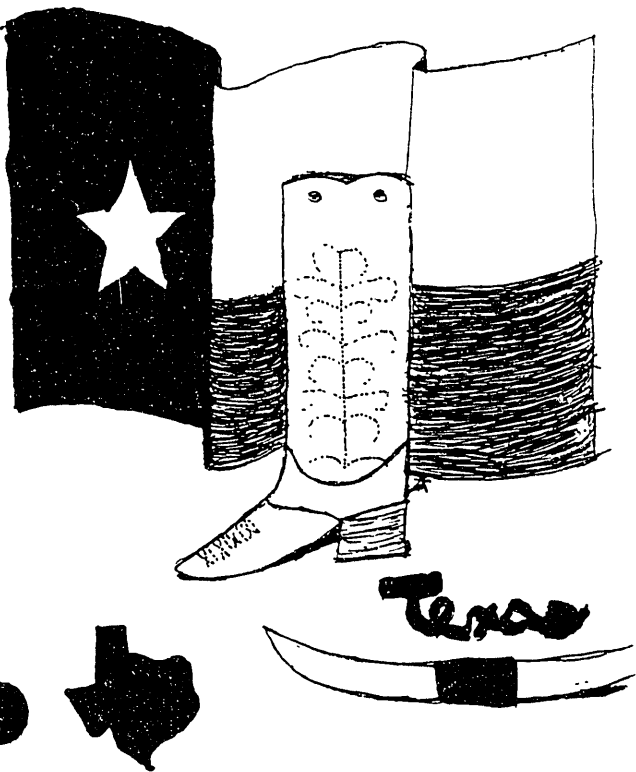


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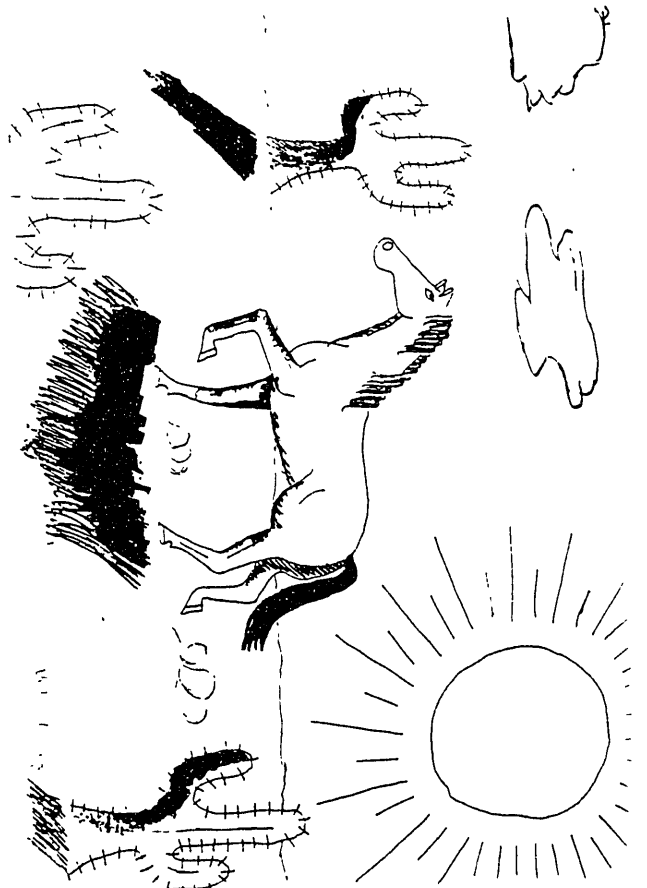


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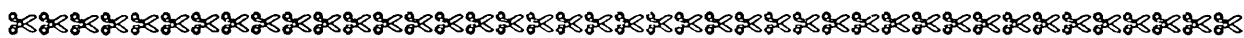


*The Texas Register Readers Choice Award  
continues with this issue!*

*You will be able to continue to VOTE throughout the summer on what you think is the best of the 1991-1992 school art project submissions. In this issue, we continue publishing artwork from students in grades seven through nine. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "7-1" will indicate that the picture is the first submission in the seventh through ninth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.*

*The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.*

*The artwork does not add additional pages and does not increase the cost of the Texas Register.*



*1991 - 1992 Texas Register Readers Choice Award.*

*Please enter my vote for the "best of the best" :*

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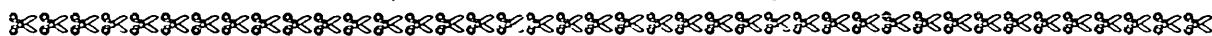
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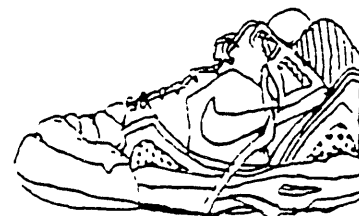
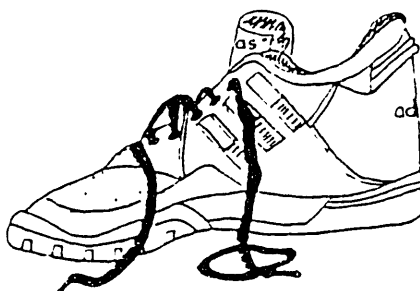
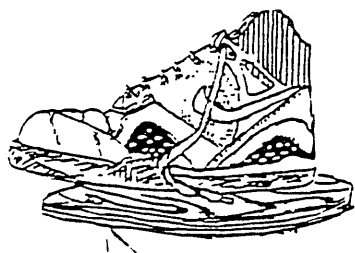
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*For more information contact Roberta Knight (512) 463-5561.*



*Lets get started on the right foot!*



# Secretary of State

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**Under provisions of the Texas Election Code (Article 1. 03), the secretary of state is authorized to issue opinions based on the election laws. Under provisions of Texas Civil Statutes (Article 6252-9c, §14A), the secretary of state is authorized to issue advisory opinions in response to written requests based on a real or hypothetical situation that relates to Article 6252-9c. Under the provisions of the Texas Election code, §§31.001, 31.003, 31.004, and 31.005 the secretary of state is authorized to issue directives.**

Questions on particular submissions should be addressed to the Office of the Secretary of State, Elections Division, P.O. Box 12887, Austin, Texas 78711, 1 (800) 252-9602 or (512) 463-5650.

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## Office of the Secretary of State

### DIRECTIVE

TO: County Clerks, Voter Registrars, Election Administrators, Party Officials

FROM: John Hannah, Jr., Secretary of State

DATE: August 6, 1992

This Directive is issued pursuant to my authority as Chief Election Officer of the State of Texas and under the Texas Election Code, §§31.001, 31.003, 31.004, and 31.005. All matters in this Directive pertain to the 1992 General Election for State and County Officers.

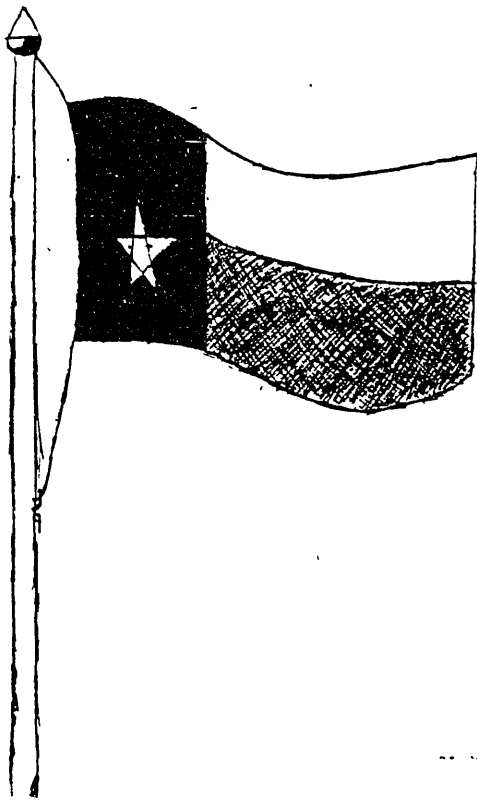
1. The election for the Texas Senate on November 3, 1992, shall be held pursuant to Senate Bill 1, 72nd Legislature, 3rd Called Session, 1992 (hereinafter referred to as "Senate Bill 1").
2. The candidates who received the nominations of their respective parties for Texas Senate in the 1992 primary

elections will be the nominees for the same numbered Senate Districts in November, 1992, under Senate Bill 1.

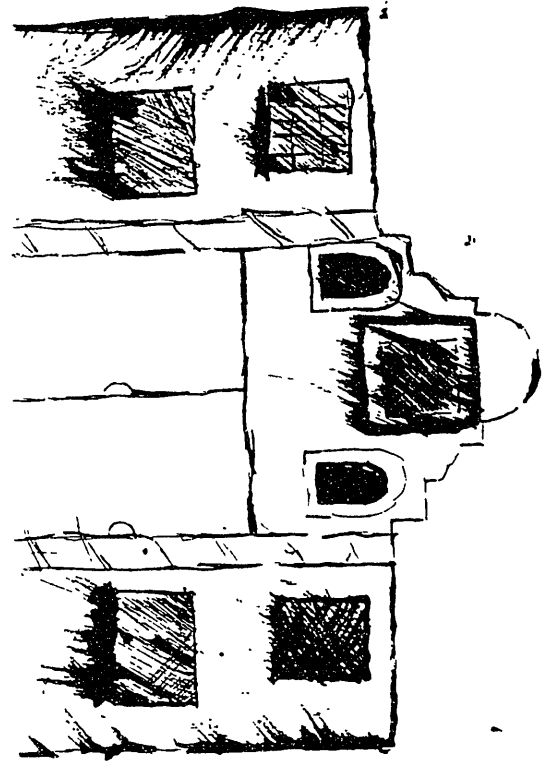
3. Upon the request of a nominee for the Texas Senate who does not reside in the Senate District, under Senate Bill 1, for which he or she was nominated in the primary elections, the appropriate State Chair shall administratively declare the nominee ineligible under the Texas Election Code, §145.003, by the deadline of August 31, 1992.

4. In the event a nominee is administratively declared ineligible under the Texas Election Code, §145.003, the appropriate party executive committee may name a replacement nominee under the Texas Election Code, §145.036 and §145.037, not later than September 4, 1992. A replacement nominee must meet the qualifications of the Texas Constitution, Article III, §6 and may include a previous nominee who was administratively declared ineligible under Item 3 above.

Any questions concerning lines or maps of Senate Bill 1 should be directed to the Texas Legislative Council at (512) 463-1143. Any questions concerning any other matter relating to the election of the Texas Senate should be directed to John Tunnell, General Counsel to the Secretary of State, at (512) 463-5701.



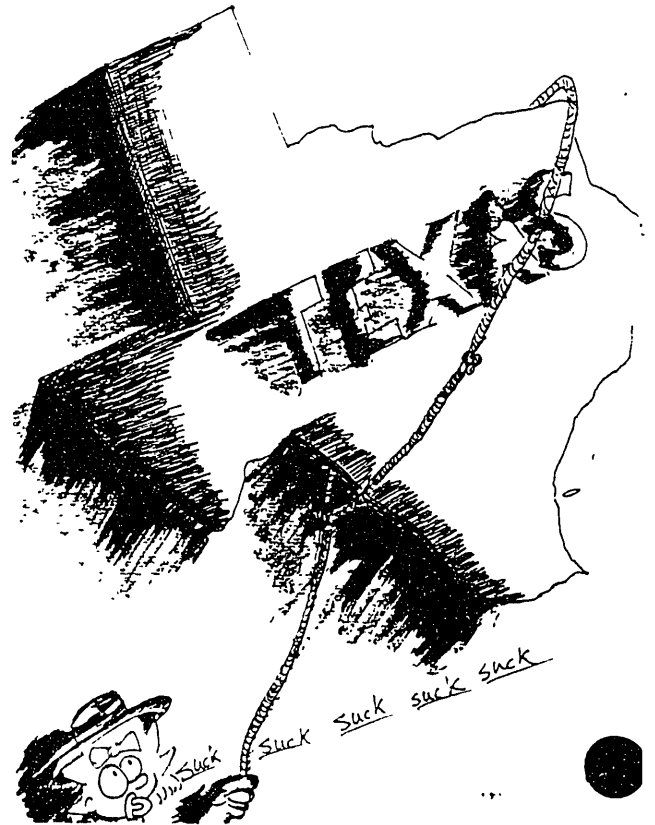
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# Attorney General

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

## Letter Opinions

**LO-92-9 (RQ-358).** Request from Gary L. Watkins, Chairman, Higher Education Committee, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether notice that a community college district board was to consider selection of interim chancellor satisfied requirements of the Texas open Meetings Act, Article 6252-17, Texas Civil Statutes.

**Summary of Opinion.** Whether any specific notice constitutes a violation of the Open Meetings Act, Texas Civil Statutes, Article 6252-18, §3A(a) must ultimately be determined by a trier of fact.

**LO-92-10 (RQ-129).** Request from Michael J. Guarino, Criminal District Attorney, Galveston County, 405 County Courthouse, Galveston, concerning whether a county commissioner may serve as a trustee of a school district.

**Summary of Opinion.** At present, there are no conflicts as to taxing authority between the offices of county commissioner and trustee of a school district that would render the offices incompatible. Future legislation on taxation by school districts should be examined to determine whether it gives rise to a common law incompatibility between the two offices. Whether the authority of the school board under the Education Code, §2.04, creates an incompatibility between the two offices depends on facts as to the location of land owned and used by the school district.

**LO-92-11 (ID-12647).** Request from Helen L. Campbell, Office of Fire Fighters' Pension, Commissioner, 3910 South IH-35, Suite 235, Austin, concerning authority of Fire Fighters' Pension Commissioner under Texas Civil Statutes, Article 6243e.3 with regard to volunteer fire fighters pension contracts.

**Summary of Opinion.** A contract entered into pursuant to Texas Civil Statutes, Article 6243e.3 may not provide for the payment of a monthly annuity which is computed at a rate greater than the rate specified in §3(b) of the act. The Fire Fighters' Pension Commissioner may not administer a

contract which calls for payment of benefits in violation of Article 6243e.3. The commissioner may not dictate to governmental bodies the level of benefits they provide to volunteer fire fighters under the act.

**LO-92-12 (ID-15819).** Request from James F. Hury, Jr., Representative, Texas House of Representatives, P.O. Box 2910, Austin, concerning ticketing of unauthorized vehicle parked on private property in a "disabled" designated parking space.

**Summary of Opinion.** Pursuant to Texas Civil Statutes, Article 6675a-1, §10, political subdivisions may ticket unauthorized vehicles which park in spaces on private property designated for use by vehicles transporting disabled persons.

**LO-92-13 (RQ-274).** Request from Bob Bullock, Lieutenant Governor of Texas, P.O. Box 2068, Austin, concerning whether a rider to the General Appropriations Act may authorize the Texas Public Finance Authority to issue revenue bonds to finance construction of a state office building in Nueces County.

**Summary of Opinion.** Section 125 of the current General Appropriations Act is a valid method by which the legislature may authorize the issuance of revenue bonds to finance construction of a state office building in Nueces County.

**LO-92-14 (RQ-339).** Request from Robert Eckels, Chairman, Committee on County Affairs, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether the County Court of Taylor County has jurisdiction over juvenile matters.

**Summary of Opinion.** The County Court of Taylor County does not have jurisdiction over juvenile matters. The Juvenile Board of Taylor County may designate one or more of the following as the Juvenile Court(s) of Taylor County: the District Courts of Taylor County; and the Statutory County Courts of Taylor County.

**LO-92-15 (RQ-175).** Request from Burton F. Raiford, Interim Commissioner, Texas Department of Human Services, P.O. Box 149030, Austin, concerning whether an employee of the Department of Human Ser-

vices may take sick leave to care for an ill child for whom she is a managing or possessory conservator, where the child is not a member of the employee's "immediate family" as defined in the General Appropriations Act, Article V, §8(2).

**LO-92-16 (ID-16325).** Request from Steven D. Wolens, Chairman, Business and Commerce Committee, Texas Housing of Representatives, P.O. Box 2910, Austin, concerning expenditure of hotel occupancy tax revenues.

**Summary of Opinion.** Hotel occupancy tax funds may only be expended in conformity with Chapter 351 of the Tax Code.

**LO-92-17 (RQ-296).** Request from Alvin Roy Granoff, Chairman, Committee on State, Federal and International Relations, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a hearing examiner may be named a party defendant or subpoenaed to testify in an appeal of a civil service award under the Local Government Code, §143.057(j).

**Summary of Opinion.** A third party hearing examiner appointed pursuant to the Local Government Code, §143.057 is not a necessary or indispensable defendant to an appeal of the hearing examiner's award, but may be joined in a proper case as a defendant. Texas case law to date indicates that a third party hearing examiner may be called to testify in such an appeal.

**LO-92-18 (RQ-316).** Request from Bill Turner, Brazos County District Attorney, 300 East 26th Street, Suite 310, Brazos County Courthouse, Bryan, concerning the legality of casino night events at Texas A&M University.

**Summary of Opinion.** The described "casino night" activities would violate the Penal Code, §47.02 prohibition on gambling-"making bets"-unless as a matter of fact the activities in question fall within the "carnival contests" exception to the definition of "bet" in the Penal Code, §47.01(C) and (D). Whether the "private place" defense to prosecution for such activities would be available would also involve questions of fact.

**LO-92-19 (ID-16011).** Request from Charles D. Johnson, County Attorney, Dimmit County Courthouse, Carrizo Springs, concerning whether a trustee of an independent school district vacates her office by moving outside of the county in which the district is located.

**Summary of Opinion.** Under the Texas Constitution, Article XVI, a trustee on the board of trustees of an independent school district vacates her office if she relinquishes her residence in the district by moving to a location outside the district and presently intends to change her residence. If, however, she has left the district only temporarily without intending to change her residence, the trustee position she holds is not vacant.

**LO-92-20 (RQ-345).** Request from Larry A. Farrow, Executive Director, Texas Funeral Service Commission, 8100 Cameron Road, Building B, Suite 550, Austin, concerning whether the El Paso County Commissioners Court may authorize the El Paso Medical Examiner to charge a fee for the storage of human bodies.

**Summary of Opinion.** The order of the El Paso Commissioners Court establishing a storage fee for human bodies at the El Paso County Morgue (or the office of medical examiner) is invalid because there is no statute authorizing the commissioners court to establish such a fee.

**LO-92-21 (RQ-328).** Request from Michael G. Mask, Jack County Attorney, County Courthouse, Third Floor, Jacksboro, concerning whether a county's reduction of the number of justice of the peace precincts to one also reduces the number of constable positions to one.

**Summary of Opinion.** By reducing the number of county justice of the peace positions to one, Jack County also thereby reduced the number of constable positions to that number.

**LO-92-22 (RQ-312).** Request from Michael J. Guarino, Criminal District Attorney, Galveston County, 405 County Courthouse, Galveston, concerning whether a commissioners court may refuse to fund positions in a tax assessor's office.

**Summary of Opinion.** Determining whether the commissioners court would abuse its discretion by refusing to fund positions in the tax assessors office would involve questions of fact. Determining whether the tax assessor could be personally liable for acts of an appraisal district which had contracted with the county to perform appraisal functions would also involve questions of fact that cannot be addressed in the opinion process.

**LO-92-23 (ID-16403).** Request from Leslie V. Vance, Criminal District Attorney, Eastland County, P.O. Box 527, Eastland,

concerning jurisdiction of justice courts in misdemeanor cases.

**Summary of Opinion.** A justice court properly has jurisdiction only in those criminal cases in which the fine does not exceed five hundred dollars.

**LO-92-24 (RQ-341).** Request from Judith M. Porras, General Counsel, General Services Commission, 1711 San Jacinto, P.O. Box 13047, Austin, concerning whether Texas Civil Statutes, Article 601b, §3.102, applies to a bid of contract that includes proposed financial participation by certain former state employees.

**Summary of Opinion.** Texas Civil Statutes, Article 601b, §3.102, applies to a bid or contract to be accepted or awarded by a state agency that includes financial participation by a former employee who received either salary, wages or other compensation from the agency to participate in the preparation of specifications for that bid or contract.

**LO-92-25 (RQ-381).** Request from Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether a county is required to give security for costs when it contests an application for a beer license pursuant to the Texas Alcoholic Beverage Code, §61.39, and related questions.

**Summary of Opinion.** Neither attorneys' fees nor the delay due to a license challenge are recognized costs under the Texas Alcoholic Beverage Code, §61.39.

A county, city or town is not required to post costs under §61.39.

**LO-92-26 (RQ-347).** Request from Marvin J. Tizman, Executive Director, Texas Surplus Property Agency, P.O. Box 8120, San Antonio, concerning whether a tax-exempt, nonprofit corporation which is exempt from the Texas Proprietary School Act by the Texas Education Code, §32.12(a)(2) is an "approved, accredited or licensed" "school" for purposes of the act.

**Summary of Opinion.** A tax-exempt, nonprofit corporation that has obtained an exemption pursuant to §32.12(a)(2) of the Education Code is not a "school" "approved, accredited or licensed" under the Texas Proprietary School Act.

**LO-92-27 (ID-16633).** Request from Glen Hartman, Executive Director, Texas Public Finance Authority, P.O. Box 12906, Austin, and Andrew Sansom, Executive Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, concerning constitutionality of Senate Bill 3, Acts 1991, 72nd Legislature, 1st Called Session, Chapter 4, §14.07 and §14.09, at 98, 118-19, regarding issuance of park development bonds.

**Summary of Opinion.** Sections 14.07 and 14.09 of Senate Bill 3, Acts 1991, 72nd Legislature, 1st Called Session, Chapter 4, at 118-19, are constitutional, and together they authorize the Texas Public Finance Authority to act as the issuer and seller of bonds which have been "provided for" by the Texas Parks and Wildlife Department.

## Open Records Decisions

**ORD-588 (RQ-2181).** Request from Philip Barnes, Commissioner, State Board of Insurance, Austin, concerning application of the litigation exception of the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(3), to pending and contemplated administrative hearings.

**Summary of Decision.** Information related to a contested case before an administrative agency, to which the state is, or may be, a party, is "information relating to litigation" within §3(a)(3) of the Open Records Act, Texas Civil Statutes, Article 6252-17a, Texas Civil Statutes, Article 6252-17b, requiring licensing agencies to maintain files about its licensees in a manner that permits public access to all information about them, unless the information is within an exception to the Open Records Act, or is made confidential by some other provision of law.

**ORD-589 (RQ-81).** Request from Mark T. Sokolow, City Attorney, City of League City, League City, concerning disclosure of attorney bills under the Open Records Act.

**Summary of Decision.** Attorney fee bills may be withheld under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(7) only if they reveal client confidences or attorney advice.

**ORD-590 (RQ-2183).** Request from Genevieve G. Stubbs, First Assistant General Counsel, Texas A&M University System, College Station, concerning availability under the Texas Open Records Act of information identifying donors and amount of donations to West Texas State University.

**Summary of Decision.** Information identifying donors or pledgors, and amounts of donations and pledges, including outstanding pledges, to a public university is not within an exception to the Texas Open Records Act.

**ORD-591 (RQ-33).** Request from Jeff W. Ryan, Cowles and Thompson, Irving Hospital Authority, Dallas, concerning whether a patient has a right under the Open Records Act, §3B(a) to see peer review committee documents pertaining to him.

**Summary of Decision.** The main purpose of the confidentiality provision of the Health and Safety Code, §161.032 and Texas Civil Statutes, Article 4495b,

§5 06(g) the Medical Practice Act, is to encourage frank discussion, not to protect patient privacy. Therefore, a patient whose treatment is the subject of such records has no special right of access to such records under the Open Records Act, §3B(a).

**ORD-593 (RQ-10).** Request from Wayne Blevins, Executive Secretary, Teacher Retirement System of Texas Austin, concerning whether information about the Teacher Retirement System's investment in a building is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4).

**Summary of Decisions.** The Teacher Retirement System, as an entity that is authorized by both constitutional and statutory law to invest its securities, may be deemed, with regard to those investments, a "competitor" in the marketplace for purposes of the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4). Whether release of particular information would harm the legitimate marketplace interests of the system requires a showing of the possibility of some specific harm in a particular competitive situation. Here, TRS has made such a showing.

**ORD-599 (RQ-2121).** Request from William Grossenbacher, Administrator, Texas Employment Commission, Austin, concerning whether certain information submitted by employers to the Texas Employment Commission is subject to disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

**Summary of Decisions.** Texas Civil Statutes, Article 5221b-9(g), makes confidential information the Texas Employment Commission obtains in employment records and reports, including SIC numbers and the number of employees of an employing unit. Texas Employment Commission identification numbers are excepted from disclosure by the Open Records Act, §3(a)(1), because federal regulations prohibit their public disclosure.

**ORD-600 (RQ-103).** Request from J. Kirk Brown, General Counsel, Texas Department of Criminal Justice, Huntsville, concerning availability under Open Records Act of personnel records of employees of the Texas Department of Criminal Justice.

**Summary of Decisions.** The Institutional Division of the Texas Department of Criminal Justice received requests under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, for information in the personnel files of certain employees. Several categories of information were found to be excepted from public disclosure.

The Open Records Act, §3(a)(17)(B), adopted by House Bill 729 of the 72nd Legislative Session and effective May 8,

1991, excepts from disclosure the home addresses, home telephone number, or social security numbers of employees of the Texas Department of Criminal Justice. It also excepts the home or employment address or telephone numbers or the names or social security numbers of family members of employees of the department. This information is excepted from disclosure wherever it appears in the personnel files.

The result of a personality test given by the Department of Criminal Justice to an employee is excepted from public disclosure by a constitutional right of privacy. The score on an intelligence test given to an employee is excepted from public disclosure by a common-law right of privacy.

Information about on-the-job injuries in medical records created by or under the supervision of a physician or maintained by a physician is excepted from public disclosure by Texas Civil Statutes, Article 4495b, §5.08(b). Whether or not a report by the injured person or a witness to the accident contains private information depends on the nature of the injury and other facts included in the report.

The W-4 forms completed by employees are excepted from disclosure by the United States Code, Title 26, §6103(a).

TexFlex forms, showing the employee's decision about participation in this benefit program, concern a private financial decision to allocate compensation to optional benefits provided by a third party; thus these forms are excepted from public disclosure by a common-law right of privacy. Forms authorizing the direct deposit of the employee's paycheck also document a private decision as to allocation of compensation to a third party and are excepted from disclosure.

Authorizations for social security leveling include facts about the employee's receipt of compensation from the state as his employer and are not excepted from disclosure by a right of privacy.

The employee's participation in the group insurance program is in part a transaction with the state. Information on his application form relevant to his enrollment for basic and dependent health coverage offered pursuant to Article 3.50-2 of the Insurance Code is not excepted from disclosure by a common-law right of privacy. Certain information on the form is excepted from disclosure by the Open Records Act, §3(a)(17)(B). The remaining information on optional coverages, dependent information, and designation of a beneficiary of his life insurance is excepted from disclosure by a right of privacy.

Employee Services Option forms, which offer the employee laundry services and barber shop services at prison facilities in ex-

change for a small fee, relate to a transaction between the employee and the governmental body and are therefore not excepted from disclosure by a right of privacy.

Information in personnel evaluation forms that consists of opinion, advice, and recommendation used in the decisional process within the agency is excepted from disclosure by the Open Records Act, §3(a)(11).

**ORD-601 (RQ-2168).** Request from Norman J. Gordon, Attorney At Law, Diamond, Rash, Leslie, Smith and Samaniego, El Paso, concerning whether the El Paso Housing Finance Corporation is a governmental body under the Texas Open Records Act.

**Summary of Decisions.** The El Paso Finance Corporation is a governmental body under the Texas Open Records Act, §2(a)(G).

**ORD-602 (RQ-228).** Request from Laura Peterson House, Locke Purnell Rain Harrell, Dallas, concerning whether the Dallas Museum of Art is a "governmental body" under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §2(1)(G), and related questions.

**Summary of Decisions.** The Dallas Museum of Art is a "governmental body" within the meaning of the Texas Open Records Act only to the extent that it receives support from the City of Dallas and the State of Texas. Thus, only documents relating to those sections of the museum that are supported by the city or state are public documents subject to the Open Records Act. Documents related to areas of the DMA that are not supported with public funds are not subject to the Open Records Act.

**ORD-603 (RQ-91).** Request from Robert A. MacLean, M.D., Acting Commissioner, Texas Department of Health, Austin, concerning whether an individual has a right under the Open Records Act, §3B, to inspect information about himself in the records of a Department of Health investigation of a complaint against a home health services agency.

**Summary of Decisions.** The Open Records Act, §3B, does not affect the availability of information developed in a Department of Health investigation of complaints about a home health agency under Health and Safety Code, §142.009. Such information is confidential under Health and Safety Code, §142.009(d) and excepted from public disclosure under Open Records Act, §3(a)(1).

**ORD-604 (RQ-192).** Request from Karen Johnson, Executive Director, State Bar of Texas, Austin, concerning list of registrants for Professional Development Programs.

**Summary of Decisions.** A list of registrants for legal education programs of the State

Bar of Texas may not be withheld from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4).

**ORD-605 (RQ-366).** Request from Jack Skeen, Jr., Criminal District Attorney, Smith County Courthouse, Tyler, concerning whether the Open Meetings Act, §2(g) excepts from required disclosure under the Open Records Act the names of applicants for public employment discussed by the governmental body in an executive session.

**Summary of Decisions.** The Open Meetings Act, §2(g), is not an exception to the Open Records Act, and it does not authorize a governmental body to withhold its records of the names of applicants for public employment who were discussed in an executive session.

**ORD-606 (RQ-376).** Request from Trudi Dill, Deputy City Attorney, City of Temple, Temple, concerning whether information held to be protected from disclosure under the Texas Open Records Act may be retyped, with ellipses or asterisks indicating omitted information, as opposed to merely excised from existing documents.

**Summary of Decisions.** The Open Records Act, Texas Civil Statutes, Article 6252-17a, requires a governmental body to release to a requestor a copy of the actual requested record, with any confidential or nondisclosable information excised. Unless the parties agree otherwise, the act does not permit a governmental body to provide a requestor with a newly generated document on which only the disclosable information has been consolidated and retyped.

**ORD-607 (RQ-389).** Request from Earl Bracken, Jr., Waco City Attorney, Waco, concerning whether the subject of an HIV antibody test has a right to a copy of a laboratory report issued under a fictitious name.

**Summary of Decisions.** A laboratory report of the results of a test for HIV antibodies administered under the authority of a physician is made confidential of the Medical Practice Act, Texas Civil Statutes, Article 4495b, §5.08(b). A patient may obtain copies of his or her records in accordance with the provisions of subsections (j) and (k) of §5.08.

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## Opinions

**DM-137 (RQ-383).** Request from Cathy Bonner, Executive Director, Texas Department of Commerce, Austin, concerning whether a municipality which has levied a sales tax under Texas Civil Statutes, Article 5190.6, §4A(d), may reduce or eliminate the tax after issuance of the bonds for which the tax was levied.

**Summary of Opinion.** Where pursuant to subsections (n) and (o) of Texas Civil Statutes, Article 5190.6, §4A, an election is held to reduce the sales and use tax rate collected by a municipality on behalf of an industrial development corporation, or to limit the length of time during which the tax may be collected, such reduction or limitation may not be applied to any bonds issued prior to the date of the election.

**DM-138 (RQ-301).** Request from Rene Guerra, Criminal District Attorney, Hidalgo County Courthouse, Edinburg, concerning whether the Edinburg Hospital Authority may pay physicians a flat fee or per diem to be on call to admit emergency room patients to the hospital without violating the Health and Safety Code §161.091, which prohibits remuneration for securing or soliciting patients.

**Summary of Opinion.** Assuming that the Edinburg Hospital Authority's contracts with physicians for the purposes of admitting emergency room patients to the hospital conform with the criteria set forth in §1001.952(d) of Title 42 of the Code of Federal Regulations, payments made under such contracts would not be prohibited by the Health and Safety Code, §161.091.

**DM-139 (RQ-66).** Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether a justice of the peace is required to maintain a hard copy of the criminal docket if he or she has chosen to maintain such records electronically.

**Summary of Opinion.** A justice of the peace may maintain the criminal docket in the justice court electronically in addition to or in lieu of printed paper media. The justice is not required to simultaneously maintain printed paper copies of the electronically stored docket.

**DM-140 (RQ-326).** Request from D.R. "Tom" Uher, Chairman, Committee on Redistricting, Texas House of Representatives, Austin, concerning the status of the West Brazoria County Drainage District, and related questions.

**Summary of Opinion.** The commissioners court of Brazoria County at present constitutes the governing board of the West Brazoria County Drainage District. As such, it may set a tax rate and call an election to seek voter approval therefor. The commissioners court, acting as the board, should establish single-member districts based on the 1990 census, and call an election for the first Saturday in April 1993.

**DM-141 (RQ-329).** Request from John Sharp, Comptroller of Public Accounts, L.B.J. State Office Building, Austin, concerning whether the procedure for adjusting the rate of assessment the Public Utility Commission specified in Title 16 of the Texas Administrative Code, §21.182 and

§23.5 satisfies Texas Civil Statutes, Article 1446c, §78, which requires the commission to adjust the rate of assessment "subject to the approval of the Legislature," and related questions.

**Summary of Opinion.** Section 78 of the Public Utility Regulatory Act does not delegate any authority to the Public Utility Commission to adjust the level of assessment. Thus, only the legislature is authorized to adjust the level of assessment. An order the PUC has adopted, to be effective August 17, 1992, reducing the level of assessment, is without authority and therefore invalid. Likewise, Title 16 of the Texas Administrative Code, §21.182, setting forth the procedure the PUC must use to adjust the level of assessment, is invalid.

**DM-142 (RQ-138).** Request from Merrill L. Hartman, Chairman, Court Reporters Certification Board, Austin, concerning whether the Court Reporters Certification Board is subject to Texas Civil Statutes, Article 6252-13f, which establishes the State Office of Administrative Hearings.

**Summary of Opinion.** The Court Reporters Certification Board is not subject to Texas Civil Statutes, Article 6252-13f, which establishes the State Office of Administrative Hearings.

**DM-143 (RQ-309).** Request from Lionel R. Meno, Commissioner of Education, Texas Education Agency, Austin, concerning whether the Proprietary School Tuition Protection Fund as created by the Texas Education Code, §32.91, manifests sufficient characteristics of a trust to require interest from the fund to be credited to the Tuition Protection Fund rather than the General Revenue Fund.

**Summary of Opinion.** The proprietary School Tuition Protection Fund, created pursuant to the Education Code, §32.91, is not a trust fund. Consequently, interest that accrues on the fund must be credited to the general revenue fund pursuant to the Government Code, §404.071(a)

**DM-144 (RQ-97).** Request from John Hall, Chairman, Texas Water Commission, Austin, concerning whether a Water Commission hearings examiner in a contested case about issuance of a hazardous waste permit may communicate ex parte with other employees of the commission.

**Summary of Opinion.** The Health and Safety Code, §361.0831, prohibits a hearings examiner in a contested case involving a hazardous waste permit from communicating ex parte with any employee of the commission. This provision does not permit ex parte communications between hearings examiners and employees of the agency who have not participated in any hearing of the case for the purpose of utilizing their special skills or knowledge, or communica-



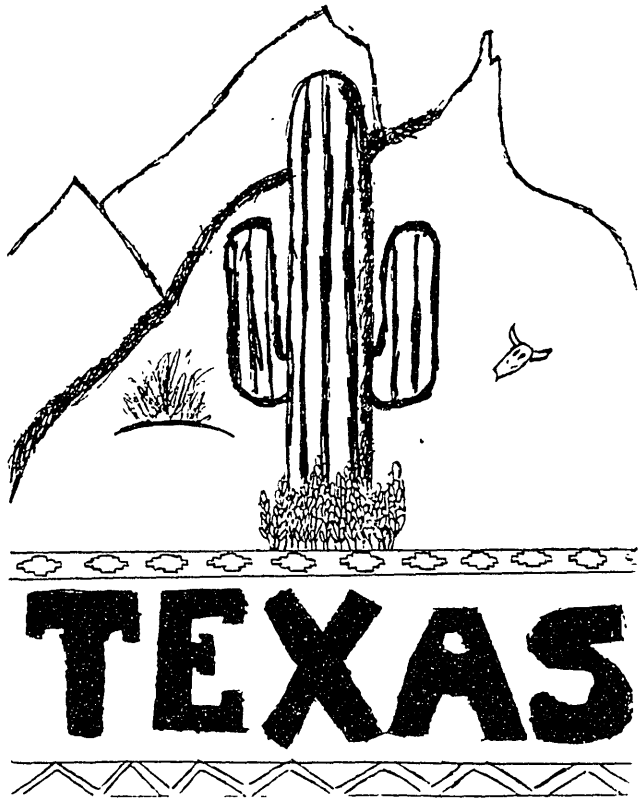
tions of hearings examiners with supervising attorneys within the Office of Hearings Examiners. Section 361.0831 also prohibits direct and indirect communications between the hearings examiner and the commissioners or the general counsel. If the supervising attorney engages in *ex parte* communications with the hearings examiner in violation of §361.0831 and then relays those communications to a commissioner or the general counsel, indirect *ex parte* communications between the hearings examiner and the commissioner or general counsel will occur. The restriction on *ex parte* communications applies during the pendency of the

contested case. Accordingly, if the commission overturns an examiner's finding of fact or conclusion of law or rejects a proposal for decision on an ultimate finding, the general counsel of the commission may not communicate *ex parte* with the examiner about preparing an explanation of the reasons for the commission's actions.

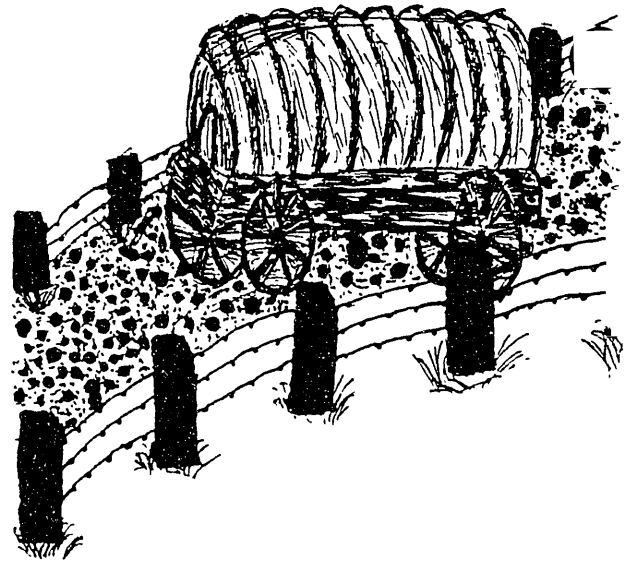
**DM-145 (RQ-180).** Request from Rick Perry, Commissioner, Texas Department of Agriculture, Austin, concerning interpretation of appropriations act rider regarding funds held by the Texas Federal Inspection Service.

**Summary of Opinion.** Money that reverted to the Texas Department of Agriculture under a cooperative agreement with the United States Department of Agriculture is to be placed in the state treasury in accordance with the Government Code, §404.093. Surplus property that reverted to the Texas Department of Agriculture is subject to the control of the General Services Commission.

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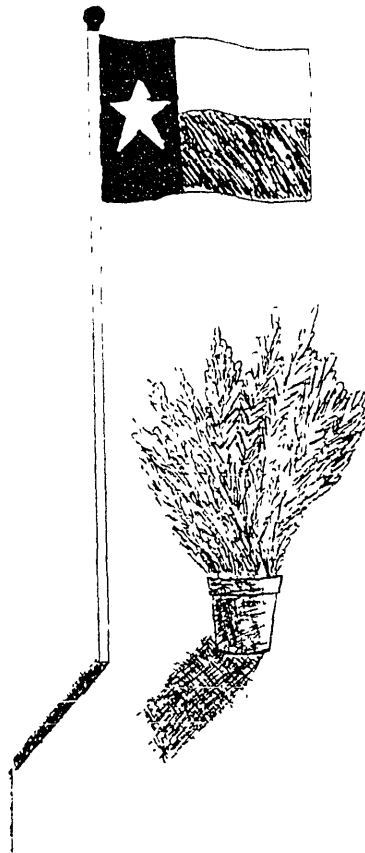


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TEXAS

# Emergency Sections

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

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

## TITLE 22. Health Services Part XXVI. Texas Board of Licensure for Professional Medical Physicists

### Chapter 601. Medical Physicists

#### • 22 TAC §§601.1-601.18

The Texas Board of Licensure for Professional Medical Physicists (board) with the approval of the Texas Department of Health (department), adopts on an emergency basis new §§601.1-601.18, concerning the licensure and regulation of medical physicists. These sections concern purpose and scope, definitions, the board's operation, fees for medical physicist licenses and temporary licenses, exemptions to licensure, application procedures, the procedures for licensure without examination, the procedures for licensure by examination in the four specialty areas of medical physics, the requirements for temporary licensure, license issuance and license holder requirements, the processing times for applications and renewals, the procedures for petitioning the board for adoption of a rule, a code of ethics, the procedures for licensing persons with criminal backgrounds, the administrative procedures for handling violations, complaints and subsequent actions, surrender of a license and formal hearing procedures. The new sections will implement the requirements of the new Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, (Senate Bill 521, Texas Legislature, Regular Session, 1991), which requires persons who practice medical physics to be licensed under the Act or be exempt under the Act. These new sections are also being proposed for permanent adoption in this issue of the Texas Register.

The board, with the approval of the department, has determined that adoption of these sections on an emergency basis is necessary because of a requirement of State law and an imminent peril to public health and safety. These sections will ensure the protection of the health, safety, and welfare of the citizens of Texas from the harmful effects of excessive radiation and from the public threat if medical physics is practiced by incompetent persons. Texas Civil Statutes, Article 4512n, became effective on September 1, 1991, and makes it a Class B misdemeanor to practice medical physics in violation of the Act, i.e., without a license, after January 1, 1992. The Board was appointed in April 1992 and must adopt emergency rules in order to allow the

licensure of qualified applicants as quickly as possible. In addition, requests for applications are now being received and there are special time-limited procedures expiring September 1, 1994, for issuing licenses without examination.

The new sections are adopted under Texas Civil Statutes, Article 4512n, §11, which requires the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Department of Health, that are reasonably necessary for the proper performance of its duties under the Act; and Texas Civil Statutes, Article 6252-13a, §5, which provide the Texas Board of Licensure for Professional Medical Physicists with the authority to adopt emergency rules.

#### §601.1. Purpose and Scope.

##### (a) Purpose.

(1) These sections in this chapter are intended to implement the provisions of the Texas Medical Physicists Act (Act), Texas Civil Statutes, Article 4512n, concerning the regulation and licensure of medical physicists, in that:

(A) the citizens of this state are entitled to the protection of their health, safety, and welfare from the harmful effects of excessive radiation; and

(B) the practice of medical physics is a threat to the public if conducted by incompetent persons.

(2) These sections in this chapter will insure that the public is protected from the dangers described by paragraph (1) (A) and (B) of this subsection by:

(A) establishing minimum standards of education, training, and competency for persons engaged in the practice of medical physics; and

(B) ensuring that the privilege of practicing in the field of medical physics is entrusted only to those persons licensed under the Act.

(b) Scope. These sections cover definitions of words and terms used in this chapter; establish general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists

(board); establish a schedule of fees, criteria for exemptions, and application procedures for licensure as a medical physicist, establish qualification requirements for licensure without examination and licensure by examination; establish eligibility requirements a person must meet for obtaining a temporary license; establish requirements for license issuance and license holder responsibilities, and license renewal; establish the time periods and procedures the board shall follow in processing applications for or renewal of a license; delineate the board's procedures in handling a petition for adoption of a rule; establish a code of ethics, establish guidelines and criteria on eligibility of persons with criminal backgrounds to obtain a license; establish standards for handling violations, complaints and subsequent actions; sets procedures a licensee must follow for surrender of a license; and establish procedures for a holding formal hearings

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

Act—The Texas Medical Physics Practice Act (Act), Texas Civil Statutes, Article 4512n, relating to the licensure and regulation of professional medical physicists.

Applicant—A person who applies to the Texas Board of Licensure for Professional Medical Physicists (board) for a license or temporary license.

APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Board—The Texas Board of Licensure for Professional Medical Physicists.

Commissioner—The Commissioner of Health of the Texas Department of Health.

Department—The Texas Department of Health.

Diagnostic radiological physics—The branch of medical physics that deals with the diagnostic application of roentgen rays, gamma rays from sealed sources, ultrasonic radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

Hearing examiner—An attorney duly designated and appointed by the chair of the board who conducts hearings under this chapter on behalf of the board.

License—A certificate issued by the board authorizing the license holder to engage in the practice of medical physics and includes the temporary license and the annual license unless the context clearly indicates otherwise

Licensed medical physicist—A person who holds a license issued under the Act

Medical health physics—The branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements

Medical nuclear physics—The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, and the use of equipment associated with the production and use of radionuclides

Medical physics—The branch of physics that is associated with the practice of medicine, and includes, but is not limited to, the field of radiological physics.

Practice of medical radiological physics—The use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

Practitioner—A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

Radiation—Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

Radiological physics—The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

Radiological procedure—A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures. The activities and services which fall within the definitions in the Act of the practice of

medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures. The activities and services which fall within the Texas Regulations for Control of Radiation, Part 32, §§32.11; 32.20 (h), 32.30 (c)(1)(iv); 32.41 (c); 32.60 (c)(1), (2), and (3); and 32.70 (c) (adopted by reference at 25 TAC §289.116 (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine)), as amended, are not radiological procedures.

Therapeutic radiological physics—The branch of medical physics that deals with the therapeutic application of roentgen rays, gamma rays, electron and other charged particle beams, neutrons, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation

### §601.3. The Board's Operation.

(a) Purpose This section sets out the organization, administration, and other general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists (board).

#### (b) Officers

##### (1) Presiding officer.

(A) The presiding officer shall be referred to as the chair.

(B) The chair shall officiate at all board meetings at which he or she is in attendance and perform all duties prescribed by this chapter or the Texas Medical Physicists Act (Act).

##### (2) Assistant presiding officer.

(A) The assistant presiding officer shall be referred to as the vice-chair.

(B) The vice-chair shall perform the duties of the chair in case of the absence or disability of the chair.

(C) In case the chair is unable to fulfill his or her term, the vice-chair will serve until a successor is elected.

#### (c) Elections.

(1) At the first regularly scheduled meeting of each calendar year, the board shall elect by a majority vote of those members present and voting, a chair and a vice-chair.

(2) A vacancy which occurs in the offices of chair or vice-chair may be filled by a majority vote of those members present and voting at the next board meeting.

#### (d) Committees.

(1) The board or the chair, with the approval of the board, may establish committees deemed necessary to assist the board in carrying out its duties and responsibilities.

(2) The chair of the board may appoint the members of the board to serve on committees and may designate a chair of each committee

(3) Committee chairs shall make regular reports to the board in interim written reports or at regular meetings, as needed.

(4) Committees shall direct all reports or other materials to the executive secretary for distribution

(5) Committees shall meet when called by the chair of the committee or when so directed by the board or the chair

(6) Committee chairs shall contact or ask that the board office contact other committee members to determine a meeting date(s) and place(s). The committee chair shall notify the executive secretary and chair of the proposed meeting date(s) and place(s).

(7) The committee chair will coordinate the meeting arrangements with the executive secretary

(8) Committee meetings shall be announced and conducted in accordance with the Open Meetings Act, Texas Civil Statutes, Article 6252-17. Committee meeting agendas shall be prepared by the executive secretary with the concurrence of the committee chair.

(9) An executive summary or minutes of each committee meeting shall be prepared by the executive secretary

#### (e) Meetings.

(1) The board shall hold at least one meeting each year and additional meetings as necessary to transact its business at such designated date, place, and time as may be determined by the chair.

(2) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(f) Quorum. A quorum of the board necessary to transact official business is five members.

#### (g) Transaction of official business.

(1) The board is authorized to transact official business only when in a legally constituted meeting with a quorum present

(2) Board action shall require a majority vote of those members present and voting.

(3) Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(h) Agendas.

(1) The executive secretary shall prepare and submit to each member of the board, at least five days prior to each meeting, an agenda, approved by the chair, which includes items requested by members; items requested by the board, the board or the executive secretary; items required by law; and other matters of board business.

(2) The official agenda of each meeting shall be filed with the Secretary of State in accordance with the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(i) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments prior to approval by the board.

(2) After approval by the board, the minutes are official only when affixed with the original signatures of the chair and the executive secretary.

(3) The official minutes of each meeting shall be kept in the executive secretary office and shall be available to any person desiring to examine them during regular office hours.

(j) Attendance.

(1) The policy of the board is that members will attend regular and committee meetings as scheduled.

(2) Except in case of emergency, board members shall notify the executive secretary at least 48 hours before a scheduled meeting if they are unable to be present.

(3) The board may report to the Texas Sunset Advisory Commission the attendance records of members.

(k) Reimbursement for expenses.

(1) A board member is entitled to per diem at the rate set by the legislature for state officials for each day the member engages in the business of the board.

(2) A board member is entitled to reimbursement for transportation and incidental expenses as provided by the latest General Appropriations Act passed by the legislature.

(3) Payment to board members of per diem and expenses shall be on official state travel vouchers.

(4) Requests for out of state travel for board activities must be approved in advance by the board.

(5) Attendance at conventions, meetings and seminars must be clearly related to the performance of official board duties.

(l) Policy against discrimination. The board shall make no decision in the discharge of its statutory authority based on any person's race, creed, sex, sexual orientation, religion, color, national origin, geographical distribution, age, or economic status.

*§601.4. Fees.* The purpose of this section is to set out the fees for licensure as a medical physicist prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) first specialty on initial application-\$125;

(ii) additional specialties on initial application-\$25 each;

(iii) additional specialties on subsequent applications-\$75 each; and

(iv) upgrade of temporary license to annual license-\$75;

(B) renewal fee:

(i) first specialty-\$75; and

(ii) additional specialties-\$25 each;

(C) 90-day penalty fee-one-half of the renewal fee (plus the renewal fee that was due at the time of expiration);

(D) 90-day to two-year penalty fee-the renewal fee (plus the renewal fee that was due at the time of expiration);

(E) license and/or identification card replacement fee-\$10; and

(F) examination fee-the fee for the specialty examination as set by contract with the examining body.

(2) The schedule of fees for a temporary license as a medical physicist is as follows:

(A) application processing and initial temporary license fee:

(i) first specialty on initial application-\$125;

(ii) additional specialties on initial application-\$25 each; and

(iii) additional specialties on subsequent applications-\$75 each;

(B) temporary license renewal fee:

(i) first specialty-\$75; and

(ii) additional specialties-\$25 each;

(C) 90-day penalty fee-one-half of the temporary license renewal fee (plus the temporary license renewal fee that was due at the time of expiration);

(D) 90-day to two-year penalty fee-the renewal fee (plus the renewal fee that was due at the time of expiration); and

(E) temporary license replacement fee-\$10.

(3) All fees are non-refundable and shall be submitted in the form of a check or money order.

(4) An applicant whose check for the application processing and initial licensing fee is returned due to insufficient funds, account closed or payment stopped shall be allowed to reinstate the application by remitting a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. If the license or temporary license has already been issued, it shall be invalid.

(5) A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted timely, the license shall not be renewed. If the renewal card has already been issued, it shall be invalid.

(6) The board shall notify the applicant's or licensee's employer that the person has failed to comply with this section.

*§601.5. Exemptions.*

(a) The purpose of this section is to set out who is exempt from the Act and who must be licensed under the Texas Medical Physicists Act (Act).

(b) Except as specifically exempted by subsection (c) of this section, the provi-

sions of the Act and this chapter apply to any person who engages in the practice of medical physics.

(c) The Act and this chapter do not apply to:

(1) practitioners in the performance of radiological procedures;

(2) a person certified as a medical radiological technologist practicing under the Medical Radiologic Technologist Certification Act, (Texas Civil Statutes, Article 4512m);

(3) persons who perform radiological procedures under a practitioner's instruction or supervision;

(4) persons performing beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for procedures not involved with the diagnosis or treatment of disease or other medical or dental conditions in humans; or

(5) a person employed by a federal or state regulatory agency who is performing duties within the scope of his or her employment.

(d) Activities that do not fall within the definition of medical physics are not governed by the Act or this chapter.

#### §601.6. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for licensure of professional medical physicist.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of qualifications on forms prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(2) The board shall not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(3) The executive secretary shall send a notice listing the required additional materials to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice may be invalidated.

(c) Required application materials.

(1) Application form. The application form shall include the following:

(A) specific information regarding personal data, social security number, birth month and day, place of

employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and this chapter and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a license, shall return the license and identification card(s) to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the board and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a license, or the revocation of any license issued;

(H) a statement that if issued a license, the applicant shall keep the board advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated and notarized.

(2) Required documentation. Applicants for a license must submit:

(A) if applying under §601.7 (a) or (b) of this title (relating to Licensure Without Examination), a notarized copy of a current Texas voter registration card or a notarized copy of a current Texas driver's license;

(B) evidence of relevant work experience, including a description of the responsibilities and duties performed;

(C) an official transcript from a college or university granting the applicant's degree or certificate of completion of training course;

(D) a statement of the medical physics specialty for which the application is submitted;

(E) three current professional references as follows:

(i) two medical physicists practicing diagnostic radiological physics, medical health physics, medical nuclear physics, or therapeutic radiological physics and one physician practicing or certified in diagnostic radiology, radiation therapy, or nuclear medicine; or

(ii) if applying for a temporary license, post-secondary academic references may be substituted; and

(F) a fee as prescribed by the board.

(d) Consideration of application. This subsection is intended to address the applications procedures required by the Texas Medical Physicists Act (Act), §14(c)-(f) and §17(a) and (b).

(1) The board or the executive secretary may require an applicant to appear before the board or executive secretary to present further information in support of the application.

(2) At any time before the board issues or renews a license, the applicant may request in writing that the board withdraw its consideration of the application, but the board shall retain the application and accompanying fee. To reapply, the applicant must submit a new application and fee.

(3) If an applicant meets all requirements of the Act and this chapter and has completed the examination, if required, the executive secretary shall approve the application and issue the annual license. The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this paragraph with a recommendation that the board ratify the approval at its next meeting.

(4) If an applicant has not completed an examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.

(A) If the committee finds that the applicant meets all requirements of the Act and this chapter, the committee shall approve the applicant to take the required examination for an annual license or

to be issued a temporary license if appropriate.

(i) The executive secretary shall issue the annual license once the applicant successfully completes the required examination.

(ii) The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this subparagraph with a recommendation that the board ratify the approval at its next meeting.

(B) If the committee finds that the applicant does not meet all requirements of the Act and this chapter, the committee shall instruct the executive secretary to give the applicant written notice of the reason of the proposed disapproval of the application and the areas of deficiency and of the opportunity for a formal hearing. The notice shall be given by the 30th day after the committee makes a decision. Within 30 days after receipt of the written notice, the applicant shall give written notice to the executive secretary if the applicant wants the hearing. If the applicant fails to respond within 30 days after receipt of the notice, the applicant is deemed to have waived the hearing and the board shall finally disapprove the application.

(e) Disapproved applications.

(1) The appropriate committee of the board shall propose disapproval and the board shall disapprove the application if the person:

(A) does not meet the qualifications for a license as set forth in the Act and this chapter;

(B) has failed to pass the prescribed examination, if applicable;

(C) has deliberately presented false information to the board to verify the applicant's qualifications;

(D) has obtained or renewed a license by means of fraud, misrepresentation, or omission of material facts;

(E) has made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(F) has been convicted of a felony or of a misdemeanor that involved moral turpitude or that directly relates to a person's duties and responsibilities as a licensed medical physicist; or

(G) has otherwise violated this Act, a lawful order or rule of the board, or the board's code of ethics.

(2) An applicant whose application has been formally denied under paragraph (1)(E)-(G) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§601.7. Licensure Without Examination.

(a) The Texas Board of Licensure for Professional Medical Physicists (board) may issue an annual license without an examination to a person who, before September 1, 1994:

(1) is a resident of this state;

(2) has an earned bachelor's, master's, or doctoral degree from an accredited college or university;

(A) in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(B) in a subject area not listed in subparagraph (A) of this paragraph, and the transcript includes at least 16 upper division semester hour credits in physics (general, modern, atomic, nuclear, radiation, or electromagnetic quantum mechanics), medical physics (diagnostic or imaging, nuclear medicine, therapeutic, dosimetry), biophysics, radiological physics or health physics; or

(C) not meeting the requirements of subparagraphs (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying the completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(3) has demonstrated to the board's satisfaction the completion of at least two years of full-time work experience between September 1, 1986, and August 31, 1991, in the medical physics specialty for which application is made; and

(4) has work experience which includes six additional months for each additional specialty.

(b) The board may issue an annual license without an examination to a person who, before September 1, 1994:

(1) is a resident of this state;

(2) has successfully completed a training course approved by the board in physics, medical physics, biophysics, radiological physics, or medical health physics that had:

(A) been conducted at a medical educational institution with accredited programs for training physicians or medical physicists in a radiology or radiological physics specialty;

(B) instructors who were board certified or board eligible in the appropriate branch of diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics; and

(C) covered a period of at least two years, with classroom and laboratory instruction which included:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(3) has demonstrated to the board's satisfaction the completion of at least 10 years of full-time work experience between September 1, 1979, and August 31, 1991, in the medical physics specialty for which application is made; and

(4) has work experience which includes six additional months for each additional specialty.

(c) The board may issue an annual license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of the Texas Medical Physicists Act (Act).

(d) The board may issue an annual license to a person who prior to September 1, 1994:

(1) is a resident of a state, territory, or jurisdiction without a medical physics licensure act or practice act;

(2) meets all other requirements for licensure without examination in accordance with subsection (a) or (b) of this section; and

(3) has demonstrated to the board's satisfaction a working knowledge of Texas rules pertaining to the license specialty requested by:

(A) certification that the person has read and understands the Act and this chapter; and

(B) successful completion of an examination offered by the board. A list of the Texas rules is available from the board upon request.

(e) Full-time work experience shall be at least 32 work hours per week in the specialty area. Part-time work experience in the specialty area may be aggregated in order to meet the minimum of 32 work hours per week.

(f) Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(g) All application materials and fees required under subsections (a), (b), and (d) of this section must be received by the board office or postmarked to the board prior to September 1, 1994.

#### §601.8. Licensure By Examination.

(a) Eligibility. To be eligible to take an examination for an annual license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree from an accredited college or university:

(A) in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(B) in a subject area not listed in subparagraph (A) of this paragraph, where the transcript includes at least 16 upper division semester hour credits in physics (general, modern, atomic, nuclear, radiation, or electromagnetic quantum mechanics), medical physics (diagnostic or imaging, nuclear medicine, therapeutic, or dosimetry), biophysics, radiological physics or health physics; or

(C) not meeting the requirements of subparagraphs (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying the completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(2) have demonstrated, to the Texas Board of Licensure for Professional

Medical Physicists (board) satisfaction, the completion of at least two years of full-time work experience in the five years preceding the date of application (the date of receipt of the application for an annual license or for the upgrade of a temporary license to an annual license) in the medical physics specialty for which application is made; and

(3) submit a completed application as required by the Texas Medical Physicists Act (Act), §14.

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week.

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(d) Approved examination.

(1) An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(A) the examination in the specialty developed and supervised by this board;

(B) for the therapeutic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in therapeutic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(C) for the medical nuclear physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in nuclear medicine physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(iii) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation; or

(iv) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(D) for the diagnostic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in diagnostic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in diagnostic imaging physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics; or

(E) for the medical health physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in radiological physics;

(ii) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(iii) the American Board of Medical Physics or its successor organization in medical health physics;

(iv) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection; or

(v) the Canadian College of Physicists in Medicine or its successor organization in general medical physics.

(2) An applicant who has successfully completed one of the examinations set out in paragraph (1)(B)-(E) of this subsection shall not be reexamined in that specialty area.

(e) Failure of examination. If the applicant fails the examination in a specialty area, the approval to take the examination will be voided if the applicant does not take either or both of the next two examinations and cannot document medical or physical reasons acceptable to the board for failure to take either of the next two examinations. The applicant will be required to submit a new application for licensure before the applicant may take another examination.

(f) An applicant who fails three examinations in a specialty area may not reapply for licensure in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full-time work experience after the third failed examination.



(1) The work experience must be under the supervision of a medical physicist holding an annual license in the specialty area.

(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.

(A) The applicant may be issued a temporary license for a fifth or sixth year only in order to gain the work experience required by this paragraph and to retake the examination once. Any temporary license issued for a fifth or sixth year shall expire upon notification to the board that the applicant failed to appear for the examination, or upon notification to the applicant of his or her failure of the examination, or upon the issuance of his or her annual license if the examination was passed, whichever occurs first.

(B) An applicant who completes the work experience within the first four years of temporary licensure and for whom an examination is given and results released during the four years is not entitled to any further temporary licenses in that specialty area.

(3) In order to obtain an annual license the applicant must take and pass the next examination after completion of the additional work experience. The applicant must reapply for licensure under subsection (a) of this section in order to take the examination.

(g) Upgrade. Following successful completion of a medical physics specialty examination prescribed by the board and the relevant work experience, a temporary licensee may upgrade the temporary license to an annual license.

(1) An annual license shall not be issued until the applicant has passed the examination. The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply except that the applicant need not file a transcript unless additional relevant course work has been completed.

(2) The temporary licensee must also submit three current professional references as follows:

(A) two licensed medical physicists practicing in the same specialty for which the temporary licensee is making application for an annual license; and

(B) one licensed physician practicing and board-certified in radiology, diagnostic radiology, radiation therapy or nuclear medicine.

(h) Expired temporary license. A person whose temporary license has expired may not upgrade the temporary license to the annual license. Application must be made under the provisions set out in §601.6 of this title (relating to Application Procedures).

#### §601.9. Temporary License.

(a) To be eligible for a temporary license, a person must meet the educational requirements set out in §601.8 of this title (relating to Licensure By Examination).

(b) A temporary license shall be issued for each specialty for a one year period.

(c) Each temporary license may be renewed annually up to three times for a maximum of four years. The four years do not have to be consecutive years.

(d) The application for renewal of a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(e) An applicant may not be approved for a temporary license in a specialty if the applicant has already held a temporary license in that specialty for a period of four years. The time period for which the applicant previously held a temporary license shall be counted towards the four year maximum.

(f) To upgrade a temporary license to an annual license in the same specialty, a licensee must file evidence of relevant work experience meeting the requirements of §601.8 of this title (relating to Licensure By Examination) and the upgrade fee.

(g) The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply.

#### §601.10. License Issuance and License Holder Requirements.

(a) The Texas Board of Licensure for Professional Medical Physicists (board) may issue a license to an eligible applicant if the applicant passes the examination, if required, and meets all other license requirements under the Texas Medical Physicists Act (Act) and this chapter.

(b) A license certificate is the property of the board and must be surrendered on demand.

(c) A licensee shall display the license in an appropriate and public manner.

(d) A licensee shall notify the board of any change in name, preferred mailing address, or place(s) of business or employment within 30 days of any change.

(1) Notification of changes shall be made in writing and be mailed to the executive secretary.

(2) Notification of name changes shall include a certified or notarized copy of a marriage certificate, court decree, or a social security card reflecting the change and the license replacement fee. The licensee shall return any previously issued license and identification cards.

#### §601.11. License Renewal.

(a) Purpose. The purpose of this section is to set out the procedures for renewal of licensure for professional medical physicists.

(b) General.

(1) A license is valid for one year from the date it is granted and must be renewed in each specialty annually.

(A) An initial annual license shall be valid through the licensee's next birth month; however, when the birth month occurs within four months, the license shall be issued for that period plus the next full year in order to establish a staggered renewal system.

(B) The renewal date of an annual license shall be the last day of the licensee's birth month.

(C) The renewal date of a temporary license shall be one year from the date of issuance.

(2) Each licensee is responsible for renewing a license in each specialty and paying the renewal fee before the expiration date and shall not be excused from paying penalty fees.

(3) The Texas Board of Licensure for Professional Medical Physicists (board) may deny the renewal of a license if the licensee is in violation of or has violated the Act or this chapter.

(4) The board shall deny renewal if required by the Education Code, §57.491 relating to defaults on guaranteed student loans.

(5) The board shall deny the license renewal of a licensee whose license is proposed for revocation, suspension, reprimand, or probation in a formal hearing. A formal hearing commences when the notice described in §601.16 of this title (relating to Violations, Complaints, and Subsequent Actions) is mailed by the board.

(A) Licenses which are not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(B) In the case of delay in the license renewal process because of formal license suspension or revocation proceedings, penalty fees shall not apply if timely and sufficient application for renewal was made.

(c) License renewal.

(1) At least 45 days prior to the expiration date of a license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the board with the required fee.

(2) The license renewal form shall require the licensee to provide current addresses, telephone numbers, and information relating to the type of practice.

(3) The completed license renewal form and the renewal fee must be postmarked or delivered on or before the expiration date of the license.

(4) The board shall issue a renewal identification card to a licensee who has met all requirements for renewal. The licensee must display the current renewal identification card with the license.

(5) The license of a person who made a timely and sufficient application for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(d) Late renewal.

(1) If a person's license has been expired for not more than 90 days, the person may renew the license by submitting the license renewal form with the 90-day penalty fee.

(2) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by submitting the license renewal form with the 90-day to two year penalty fee.

(3) If a license has been expired two years or more, the license may not be renewed. In order to be relicensed, the person shall comply with the application requirements of the Act and this chapter in effect at the time of the application and shall submit to the board:

(A) a supplemental experience record as specified by the board;

(B) a description of professional activities undertaken during the expiration period;

(C) a list of current professional references from other medical physicists and physicians; and

(D) a transcript for any degree or college credit earned since the previous license application.

(e) Active military duty. If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's authorized representative may request that the license be renewed. A request for renewal may be made before or after the expiration date.

(1) If the request is made by the licensee's authorized representative, the request must include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the State of Texas.

(3) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(4) The payment of any renewal penalty fee is waived for a licensee under this subsection.

(5) Except in extraordinary circumstances, a licensee on active duty serving outside the State of Texas shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

*§601.12. Application and Renewal Processing Times.*

(a) Purpose. The purpose of this section is to set out the time periods and procedures the Texas Board of Licensure for Professional Medical Physicists (board) shall follow in processing applications for or renewal of a license.

(b) Application processing. The following time periods shall apply in processing applications for or renewal of a license.

(1) The following periods of time shall apply from the date of receipt of an application for a license or renewal of a license until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice

stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) issuance of license or renewal for a license-30 days; or

(B) letter of application or renewal deficiency-30 days.

(2) The following periods of time shall apply from the date of receipt of the last item necessary to complete the application for a license or renewal of a license until the date of issuance of written notice approving or denying the application for a license or renewal of a license. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(A) issuance of a license or renewal of a license-30 days; or

(B) letter of denial of a license or renewal of a license-30 days.

(c) Reimbursement of fees. The following procedures will govern fee reimbursements when time periods are exceeded.

(1) In the event an application for a license or renewal is not processed in the time periods stated in subsection (b) of this section, the applicant or licensee has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(2) Good cause for exceeding the time period is considered to exist if the number of applications for license and license renewal exceeds by 15% or more the number of applications or renewals processed in the same calendar quarter the preceding year, another public or private entity relied upon by the board in the application or renewal process caused the delay, or any other condition exists giving the board good cause for exceeding the time period.

(d) Appeal. If a request for reimbursement under subsection (c) of this section is denied by the executive secretary, the applicant or licensee may appeal to the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant or licensee shall give written notice to the board at the address of the board that he or she requests full reimburse-

ment of all fees paid because his or her application or renewal was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application or renewal and of any good cause for exceeding the applicable time period. The board shall provide written notice of the decision to the applicant or licensee and the executive secretary. An appeal shall be decided in favor of the applicant or licensee if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant or licensee, full reimbursement of all fees paid in that particular application or renewal process shall be made.

(e) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included with the time periods stated in subsection (b) of this section. The time period for conducting a contested case hearing runs from the date the board receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

#### §601.13. *Petition for Adoption of a Rule.*

(a) Purpose. The purpose of this section is to delineate the Texas Board of Licensure for Professional Medical Physicians' (board) procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

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

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The board is not required to consider a petition which does not contain the information described in paragraph (2) of this subsection.

(4) The petition shall be mailed or delivered to the Texas State Board of Licensure for Professional Medical Physicians, 1100 West 49th Street, Austin, Texas 78756.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive secretary shall submit a petition meeting the requirements of subsection (b) of this section to the board.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule-making procedures in accordance with the Administrative Procedure and the Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsection (c) of this section. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

#### §601.14. *Code of Ethics.*

(a) A licensed medical physicist shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage. The provisions of the Health and Safety Code, §161.091 relating to the prohibition of illegal remuneration apply to medical physicists.

(b) A licensed medical physicist shall maintain confidentiality of physician records in accordance with the Medical Practice Act, Texas Civil Statutes, Article 4495b and other state statutes or rules where such statutes or rules apply to the licensed medical physicist.

(c) A licensed medical physicist shall not misrepresent any professional qualifications or associations.

(d) A licensed medical physicist shall not knowingly misrepresent services or attributes of any health care agency, facility, or organization.

(e) A licensed medical physicist shall not make misleading, deceptive, or false claims about the efficacy of any medical physicist's services or allow a client to hold exaggerated ideas about the efficacy of the services.

(f) A licensed medical physicist shall not use illegal drugs of any kind or promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(g) A licensed medical physicist shall not use alcohol or any drug in any manner which adversely affects his or her practice of medical physics.

(h) A licensed medical physicist shall report alleged violations of the Texas Medical Physicians Act (Act) or this chapter to the Texas Board of Licensure for Professional Medical Physicians' (board) executive secretary.

(i) A licensed medical physicist shall not make any presentation or use any advertisement or announcement of services which contains information which is false, misleading, or deceptive.

(j) A licensed medical physicist shall not claim or advertise a specialty area or practice in an area of specialty unless the licensed medical physicist holds a license in that specialty.

(k) A licensed medical physicist shall not direct, aid, or abet the practice of any other person in violation of the Act.

(l) A licensed medical physicist shall not make any false statements regarding his or her provision of services as a medical physicist.

#### §601.15. *Criminal Backgrounds.*

(a) This section establishes guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licensure as a medical physicist.

(b) Criminal convictions which directly relate to the profession of medical physics shall be considered as follows.

(1) The Texas Board of Licensure for Professional Medical Physicians (board) may suspend or revoke any existing license, disqualify a person from receiving any license, deny to a person the opportunity to be examined for a license, reprimand a licensee, or place a licensee on probation because of a person's conviction of a felony or misdemeanor if the crime:

(A) directly relates to the duties and responsibilities of a licensed medical physicist; or

(B) involves moral turpitude.

(2) In considering whether a criminal conviction directly relates to the profession of a licensed medical physicist, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes of licensure as a medical physicist;

(C) the extent to which any license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a medical physicist. In making this determination, the board shall apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c).

(c) The following felonies and misdemeanors directly relate to a license of a medical physicist because these criminal offenses indicate an inability or a tendency to be unable to properly engage in the practice of medical physics:

(1) a conviction under the Texas Medical Physicists Act (Act), §23;

(2) a conviction involving moral turpitude as defined by statute or common law;

(3) a conviction relating to deceptive business practices;

(4) a conviction relating to practicing another health care related profession without a license, certificate, or other approval required by state or federal law;

(5) a conviction relating to controlled substances, dangerous drugs, other illegal substances, or alcohol;

(6) a conviction under the Atomic Energy Act of 1954;

(7) a conviction under the Texas Radiation Control Act, Health and Safety Code, Chapter 401;

(8) a conviction for assault;

(9) an offense under various titles of the Texas Penal Code:

(A) offenses against the person (Title 5);

(B) offenses against property (Title 7);

(C) offenses against public order and decency (Title 9);

(D) offenses against public health, safety, and morals (Title 10); and

(E) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(10) other misdemeanors and felonies which indicate an inability or a tendency for the person to be unable to properly engage in the practice of medical physics. Other misdemeanors or felonies shall be considered in order to promote the intent of the Act, this chapter, and Texas Civil Statutes, Article 6252-13c.

(d) The executive secretary shall give written notice to the person that the board intends to deny, suspend, or revoke the license or reprimand or place on probation the licensee after hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's formal hearing procedures.

(e) If the board takes action under this section, the executive secretary shall give the person written notice:

(1) of the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the board and its decision;

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(4) of the earliest date that the person may appeal.

#### §601.16. Violations, Complaints, and Subsequent Actions.

(a) Purpose. The purpose of this section is to establish standards relating to:

(1) offenses which are a Class B misdemeanor under the Texas Medical Physicists Act (Act);

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations of the Act or this chapter;

(4) the Texas Board of Licensure for Professional Medical Physicists' (board) investigation of complaints; and

(5) the board's actions when violations have occurred.

(b) Types of offenses. A person commits a Class B misdemeanor if the person intentionally or knowingly:

(1) practices medical physics in violation of the Act; or

(2) uses in any manner letters, terminology, symbols, or signs to indicate or imply that the person is qualified or licensed to practice medical physics in a manner for which the person is not licensed under the Act.

(c) Disciplinary action. The board may refuse to issue or renew a license, may suspend or revoke a license, may reprimand a licensee, or may place a licensee on probation for any of the following:

(1) obtaining or renewing a license by means of fraud, misrepresentation, or concealment of material facts;

(2) having made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(3) engaging in unprofessional conduct that endangered or is likely to endanger the health, safety, or welfare of the public as described in §601.14 of this title (relating to Code of Ethics);

(4) violating the Act, a lawful order or rule of the board, or the board's code of ethics; or

(5) being convicted of a felony or misdemeanor as described in §601.15 of this title (relating to Criminal Backgrounds).

(d) Filing of complaints.

(1) Anyone may complain to the board alleging that a person or licensee has violated the Act or this chapter.

(2) A person wishing to complain against a medical physicist or other person shall notify the executive secretary. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, telephone number: (512) 834-6655).

(3) Upon receipt of a complaint the executive secretary shall send or give an acknowledgment letter and the board's complaint form to the complainant which the complainant must complete and return to the executive secretary before further action can be taken.

(4) Anonymous complaints may be accepted if sufficient information for investigation is submitted.

(e) Investigation of complaints.

(1) The executive secretary or the board's designee shall request a notarized response from the licensee or person against whom a complaint has been filed.

(2) A committee of the board shall be appointed to work with the executive secretary in reviewing and resolving complaints. The executive secretary shall keep the committee informed in a timely manner as to the status of the complaint.

(3) If the committee determines that there may be sufficient grounds to support the complaint, the committee may request that the matters in question be investigated by the executive secretary or the board's designee if not already fully investigated by the executive secretary or other person.

(4) If the committee determines that there are insufficient grounds to support the complaint or that further action is not warranted, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(5) At least once each quarter, the board shall notify the complainant of the status of his or her complaint until the complaint is finally resolved or closed.

(6) If after investigation a complaint is not dismissed by the committee of the board, the committee may recommend that the license be revoked, suspended, or denied or that the licensee be reprimanded or placed on probation or that other appropriate action as authorized by law be taken by the board.

(f) Reprimand, suspension, revocation, denial, or probation.

(1) A reprimand is a written notice from the board to the licensee stating that the licensee has violated the Act or this chapter. A reprimand shall include a request that the licensee stop the violation immediately. A reprimand may be issued only if it is the licensee's first violation of the Act or this chapter and represents no immediate or continuing threat to the health and safety of an individual or the general public.

(2) If the board suspends a license, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(3) If a suspension overlaps a license renewal date, the suspended licensee shall comply with the renewal procedures in

this chapter; however, the suspension shall remain in effect pursuant to paragraph (2) of this subsection.

(4) Upon revocation, suspension, or nonrenewal of a license, a licensee shall return his or her license certificate and all existing renewal certificates to the board.

(g) Prior to institution of formal proceedings to deny a renewal or revoke, or suspend a license, the board office shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant denial, revocation, or suspension and the licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(h) If denial, revocation, or suspension of a license or reprimand or probation of a licensee is proposed, the board office shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing shall be waived and the proposed action shall be taken by the board.

(i) Receipt of a notice under subsection (g) or (h) of this section is presumed to occur on the 10th day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

*§601.17. Surrender of License.*

(a) Surrender by licensee.

(1) A licensee may at any time voluntarily offer to surrender his or her license for any reason. The offer to surrender should be made at least 10 days prior to the next scheduled Texas Board of Licensure for Professional Medical Physicists (board) meeting.

(2) Tender of the license may be by delivery by any means to the office of the board, return receipt requested.

(b) Acceptance by the board.

(1) The board shall consider whether to formally accept the voluntary surrender of the license.

(2) Surrender of a license without acceptance thereof by the board shall not deprive the board of jurisdiction over the licensee under the Texas Medical Physicists Act (Act) or this chapter.

(c) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter and the board has accepted such

a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated or renewed; however, a person may apply for a new license in accordance with the Act and this chapter.

*§601.18. Formal Hearing Procedures.*

(a) The appropriate committee of the Texas Board of Licensure for Professional Medical Physicists (board) may determine whether a hearing will be held before a hearing examiner or the board. If a hearing examiner is not utilized, the board shall conduct the formal hearing and contested case proceedings and all references to the hearing examiner in this section shall be references to the board.

(b) A formal hearing or contested case proceeding shall be held in Travis County, Texas unless the hearing examiner determines that another location best serves the interests of the parties and the purposes of the hearing.

(c) All formal hearings shall be in accordance with Administrative Procedure and Texas Register Act (APTRA), and 25 TAC §§1.21, 1.22, 1.26-1.32, and §1.34 (relating to Formal Hearing Procedures), except as otherwise stated in this chapter. All references to "agency", "board", or "commissioner" mean the Texas Board of Licensure for Professional Medical Physicists.

(d) The hearing examiner shall be an attorney duly designated and appointed by the chair of the board who conducts hearings under the Act and this chapter on behalf of the board.

(e) The hearing examiner shall give notice of the formal hearing according to the notice requirements of APTRA.

(f) If a party fails to appear or be represented at a hearing or proceeding after receiving notice, the hearing examiner may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances. Failure to appear at a formal hearing constitutes a waiver of the right to a hearing and the proposed action may be taken.

(g) The parties to a hearing shall be the applicant or licensee and the appropriate committee of the board.

(h) The board is not required to adopt the hearing examiner's proposal for decision after a hearing and may take action to deny, suspend, or revoke the license or reprimand or place the licensee on probation as the board deems appropriate and lawful.

(i) A motion for rehearing shall be filed with the executive secretary.

Issued in Austin, Texas, on August 3, 1992.

TRD-9210580

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

Effective date: August 3, 1992

Expiration date: December 1, 1992

For further information, please call: (512)  
834-8628



# Proposed Sections

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

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

## TITLE 1. Administration

### Part II. Texas Ethics Commission

#### Chapter 20. Campaign Financing

##### Subchapter C. Rules Concerning Reports

- 1 TAC §§20.111, 20.113, 20.115, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, 20.161

The Texas Ethics Commission proposes new §§20.111, 20.113, 20.115, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, and 20.161, concerning the procedure for the determination of late reports of contributions and expenditures required to be filed with the commission by the Texas Election Code, Title 15, and the method of assessing civil penalties for late filings, and the procedure for appealing of fines to the commission.

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

Mr. Mathieson also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to promote the on-time filing of reports with the commission giving the public more timely disclosure. 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 Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752, (Only written comments will be accepted).

The new sections are proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the Texas Election Code, Title 15.

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

**Common or contract carrier**—A business that is regularly engaged in the delivery of parcels for the general public, but does not include an employee of the filer.

**Executive director**—The executive director of the Texas Ethics Commission.

**Filer**—A person required to submit documents or information to the commission by the Texas Election Code, Title 15.

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

**Report**—Any document or information required to be filed with the commission by a filer.

*§20.113. Change of Address.*

(a) A filer who is required to file a campaign treasurer appointment with the commission shall provide written notice to the commission of any change of mailing address for the filer no later than the 10th-day after the effective date of the change.

(b) Mail from the commission to a member of the Texas Legislature shall be sent by state inter-agency mail to the House of Representatives post office or the Senate mail room unless the legislator provides written notice to the commission of an alternative mailing address.

*§20.115. One-Time Notice of Filing Obligations.*

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

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

(2) one copy of the appropriate forms for future use by the filer.

(b) Failure to receive the reporting forms is not a defense for failure to file a report or for failure to pay a fine.

*§20.119. Late Report.*

(a) A report is filed on:

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

(2) if the report is mailed, the date the report is deposited in an official repository of the United States Postal Service, if the report is properly addressed with all postage or handling charges prepaid; or

(3) if the report is delivered by common or contract carrier, the date the report is delivered to the common or contract carrier, if the report is properly addressed with all handling charges prepaid.

(b) A report is late if:

(1) it is not filed by the deadline established by the applicable statute; or

(2) even if it is filed by the deadline, the report does not include all information that must be included in the report and all required signatures, oaths, and affirmations.

(c) Each day that a report is late shall constitute a separate violation.

*§20.121. Preliminary Notice that Report is Late.*

(a) The commission staff shall notify each filer whose report appears to be late of the reason the report appears to be late.

(b) If the report has not been received by the commission when the notice required by subsection (a) of this section, is sent, the notice shall state that the report will be determined to be late and a civil penalty will be assessed unless the filer provides to commission staff the following response:

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

(2) an affidavit that states the report was filed by the deadline. The affidavit under this paragraph shall comply with §20.127 of this title (relating to Affidavit of Timely Report).

(c) If a complete report appears to be late because the date of the postmark or receipt mark of a common or contract carrier is after the deadline or is illegible, the notice shall state that the report will be determined to be late and a fine will be assessed unless the filer provides a completed affidavit that complies with §20.127 of this title.

(d) If the report is filed and the filer provides an affidavit that complies with §20.127 of this title, the report will be deemed to have been timely filed.

(e) If a report appears to be late because of a *de minimus* error in reporting required information, the notice shall state that the report will be determined to be late and a fine will be assessed unless the filer provides an amended report within 10 business days of the filer's receipt of the notice.

**§20.123. Determination that Report is Late.**

(a) A report is determined to be late when:

(1) the filer's response to the preliminary notice under §20.121 of this title (relating to Preliminary Notice that Report is Late) does not establish that the

report was filed by the deadline, or does not include a copy of the report if a copy of the report is necessary; or

(2) a report that is filed is found by commission staff to be incomplete.

(b) A rebuttable presumption of lateness is raised when the filer's response to the preliminary notice under §20.121 of this title is not actually received by commission staff by the 10th business day after the preliminary notice was mailed to the filer. The presumption may be rebutted by submitting to the executive director an affidavit under §20.127 of this title (relating to Affidavit of Timely Report), and if necessary, a copy of the report.

(c) The commission staff shall mail a determination of lateness to each filer whose report is determined to be late. The determination of lateness shall state the reason the report has been determined to be late, that a fine has been assessed in the amount established by §20.131 of this title (relating to Calculation and Imposition of Fine), order the filer to file immediately all required information, and demand remittance of all fines owed by the filer.

**§20.125. Report More than 30 Days Late.** If a report is more than 30 days late,

the commission staff shall send by registered mail, or by certified mail, return receipt requested, a demand for the report and a warning of liability. The warning shall advise the filer that if the report is not actually received by the commission staff before the 10th day after the day on which the warning was received, the commission may impose the additional fine authorized by §20.131(c) of this title (relating to Calculation and Imposition of Fine). The warning shall also advise the filer that the commission may refer the matter to the appropriate prosecutor for criminal prosecution. The determination of lateness required by §20.123 of this title (relating to Determination that Report is Late) may be included in the demand and warning required by this section.

**§20.127. Affidavit of Timely Report.**

(a) An affidavit of a filer swearing that a report is timely must be sworn under penalty of perjury before an officer qualified to administer an oath, and must make the following statement, or a substantially similar statement:



I, (name of filer), filed (description of report) with the Texas Ethics Commission on or before (date of deadline) by the following method: (indicate one)

\_\_\_ by first-class United States Mail, properly addressed with all postage charges prepaid.

\_\_\_ by common or contract carrier (specify name of carrier), properly addressed with all delivery and handling charges prepaid.

\_\_\_ by personally delivering it to the offices of the Texas Ethics Commission at 1101 Camino La Costa, Austin, Tx.

I do solemnly swear (or affirm) under penalty of perjury that the foregoing statement is in all things true and correct.

(signature of filer)

Sworn and subscribed before me by (name of filer) this the \_\_\_ day of \_\_\_\_\_, 19\_\_\_, to certify which, witness my hand and seal of office.

(signature of officer administering oath)

(name of officer administering oath)

(title and seal of officer administering oath)

(b) Commission staff shall prepare and make available a form containing the affidavit prescribed in subsection (a) of this section. The form shall be included in all notices to which the affidavit is part of an appropriate response.

(c) Commission staff shall have discretion to accept an affidavit that substantially conforms to the affidavit prescribed in subsection (a) of this section.

(d) Commission staff may not accept any affidavit if the oath is in any way qualified.

#### *§20.131. Calculation and Imposition of Fine.*

(a) Except as provided by subsections (b), (c) and (d) of this section, the fine for a late report shall be \$25 for each day the report is late.

(b) The fine for a late report that is required to be filed eight days before any election shall be \$100 for each day the report is late.

(c) Unless the commission receives payment of a fine calculated under subsections (a) or (b) of this section, then beginning on the 10th day after the filer's receipt of a demand and warning sent under §20.125 of this title (relating to Report More than 30 Days Late), and in addition to the fines authorized by subsections (a) or (b), the commission may impose a fine of \$1,000 for each 30 day period that the report is late, including the first 30 day period. The commission may also refer the matter to the appropriate prosecutor for criminal prosecution.

(d) The fine for a late report that has been successfully defended under §20.135 of this title (relating to Defenses to Late Filing) shall be a single fine of \$100.

(e) The number of days a report is late shall be computed by adding the days beginning on the day after the due date for the report and ending on the date a complete report is filed.

(f) Commission staff shall assess and collect the fine authorized by this section.

(g) The total aggregate fine for a single late report shall not exceed \$10,000.

#### *§20.133. Appeal of Fine to Commission.*

(a) A filer may appeal to the commission a fine imposed under this subchapter.

(b) An appeal under this section will be heard according to the Administrative Procedure and Texas Register Act.

(c) An appeal must be based on the following:

(1) a reasonably unforeseeable and extraordinary circumstance which reasonably caused the filer to miss a deadline for filing a report; or

(2) a denial of a defense asserted under §20.135 of this title (relating to Defenses to Late Filing).

(d) To file an appeal, the filer must have a complete report on file with the commission. The filer must submit a signed, written statement, sworn to under penalty of perjury before an officer qualified to administer an oath, to the executive director expressly requesting that an appeal be heard by the commission and clearly describing the circumstance upon which the appeal is based.

(e) After the appeal is filed, commission staff shall not collect the fine until the appeal is decided by the commission.

(f) The commission shall decide the appeal no earlier than its first meeting more than 30 days after the date the appeal is filed.

(g) Commission staff shall notify the filer requesting an appeal of the date and time of the hearing by registered mail postmarked not later than the date that the notice of the meeting is posted in accordance with the Open Meetings Act, Article 6252-17. The filer may waive this notice.

(h) The commission shall consider the following factors in an appeal:

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

(2) any history of the filer's previous violations;

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

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

(5) any other matter that justice may require.

(i) After hearing the appeal, the commission may affirm, reduce, or dismiss the fine.

#### *§20.135. Defenses to Late Filing.*

(a) The following are defenses to a fine assessed under this subchapter:

(1) good faith error by the filer to include required information in a report if the filer did not know, or reasonably should not have known, of the information before the reporting deadline;

(2) a medical emergency that is the primary reason a report is late and that involves the filer, a member of the filer's household, or a person related to the filer within the third degree of affinity or consanguinity;

(3) reasonable reliance on incorrect information given to the filer by commission staff which caused the filer to miss a deadline for filing a report; or

(4) administrative error by commission staff.

(b) These defenses may be asserted at any time after a fine is assessed, and must be asserted by submitting an affidavit to the executive director stating the relevant facts. The affidavit must be sworn under penalty of perjury before an officer qualified to administer an oath, and must state the circumstance which caused the late filing, provided that the medical condition of a person need not be stated in a defense asserted under subsection (a)(1) of this section.

(c) If a defense under this section is asserted, commission staff shall not impose or collect any fines for the alleged violation which resulted in the imposition of the fine to which the defense is asserted until the matter has been considered by the executive director. A defense asserted under this section does not remove the obligation to file immediately all required reports.

(d) The executive director shall promptly consider properly executed affidavits submitted under this section. The executive director shall dismiss a fine if a properly executed affidavit establishes the defense. If the executive director finds the affidavit insufficient, the affidavit submitted by the filer shall be automatically treated as an appeal of the fine filed under §20.133 of this title (relating to Appeal of Fine to Commission).

*§20.137. Report Must be Filed.* The satisfaction of civil and criminal penalties does not remove the obligation to file all required reports. An appeal of a fine or an assertion of a defense to late-filing does not remove the obligation to file all required reports. Penalties for failure to report any required information shall accrue until all such information is reported.

*§20.139. Attorney's Fees.* The attorney general's office may retain attorneys fees from any fine imposed by the commission which the attorney general's office collects.

*§20.151. Direct Campaign Expenditure Exceeding \$100.* An individual, corporation, or labor organization that makes a direct campaign expenditure that exceeds \$100

must file the report required by the Texas Election Code, Chapter 254, for each reporting period during the election in which a political expenditure of any amount was made.

#### §20.153. Amended Report.

(a) An amended report shall include the first page of the appropriate form, each page of the form that is amended, and the affidavit page.

(b) Information on an amended report that is changed from the report it amends should be clearly marked on each amended page.

(c) Except as provided for in §20.121(e) and §20.135(a)(1), an amendment to a report that is filed after the deadline established by statute for the report to be filed is a late report if the amendment adds any information that was required to have been included on the report when it was filed by the deadline.

#### §20.155. Special Session Report.

(a) Contributions reported in a special session report under the Texas Election Code, §254.0391, need not be reported again.

(b) An expenditure made during the reporting period of a special session are not reported in the special session report. Such expenditures are reported in the next applicable sworn report of contributions and expenditures.

§20.157. 48 Hour Reports. Contributions and expenditures reported under the Texas Election Code, §254.038 and §254.039, must be reported again in the next applicable sworn report of contributions and expenditures.

§20.159. Political Advertising Disclosure. The information required for a political advertising disclosure under the Texas Election Code, §255.001, must be stated in a phrase which appears on the face of the political advertising.

§20.161. Retention of Records and Reports. Each filer shall maintain a copy of each report filed with the commission and the records supporting that report for a period of two years from the date the report was filed with the commission.

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

Issued in Austin, Texas, on August 3, 1992.

TRD-9210569

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Proposed date of adoption: September 15, 1992

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

## Part VII. State Office of Administrative Hearings

### Chapter 155. Rules of Procedures

• 1 TAC §§155.22, 155.23, 155.25, 155.33, 155.37

The State Office of Administrative Hearings proposes new §§155.2, 155.23, 155.25, 155.33, and 155.37, concerning establishing rules of practice and procedure for contested cases conducted by the State Office of Administrative Hearings.

Steven L. Martin, chief administrative law judge, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will include uniformity of practice and a clearer understanding on the part of the public of the procedural requirement, in the conduct of contested cases by the State Office of Administrative Hearings. 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 Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, William P. Clements Building, 300 West 15th, Suite 408, Austin, Texas 78701-1649; or by mail to: P.O. Box 13025, Austin, Texas 78711-3025.

The new sections are proposed under Texas Civil Statutes, Article 6252-13f, which authorize the State Office of Administrative Hearings to conduct contested cases for all agencies which do not have a person whose only duty is to preside as a hearings officer over matters related to contested cases before the agency and Texas Civil Statutes, Article 6252-13, §4(a), which require agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

#### §155.22. Filings.

(a) All notices, pleadings, motions, answers, affidavits and all other filings in a contested case, made in accordance with the Administrative Procedure and Texas Register Act (APTRA), the Texas Rules of Civil Evidence, or other applicable law, shall be filed with the State Office of Administrative Hearings (Office) at the time the Office acquires jurisdiction under §155.7(b) of this title (relating to Jurisdiction) or at the time

the instrument is issued and delivered if that time is later than the time the Office acquires jurisdiction.

(b) Pursuant to §155.21(d) of this title (relating to Appearance of Parties at Hearings; Representation), a copy of all filings shall be sent by mail or otherwise delivered to all parties. A certificate of service, signed by the person making the filing, showing the manner of service, stating that the filing has been served on all other parties and identifying those parties shall be contained in or attached to all filings. The certificate is prima facie evidence of service. If a filing does not contain a required certificate of service, or otherwise show service on all other parties:

(1) the Office may return the filing to the filing party or;

(2) the Office may send a notice to all parties stating that the filing does not show service on all parties and will not be considered unless and until the Office is notified that all parties have been served with the filing or;

(3) the Office may, in the interest of economy of effort, send a copy of the filing to all parties.

(c) This section applies regardless of any conflicting rules of an agency for which a hearing is being conducted.

#### §155.23. Discovery.

(a) Parties to an administrative hearing before the State Office of Administrative Hearings (office) shall have the discovery rights provided in Administrative Procedure and Texas Register Act (APTRA) and the agency's statute and rules.

(b) Requests for issuances of subpoenas or commissions should be directed to the agency for which the hearing is being conducted by the Office.

(c) All discovery requests should be initially directed to the party from which discovery is being sought.

(d) All disputes with respect to any discovery matter shall be filed with and resolved by the Office.

(e) All parties will be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.

(f) Copies of discovery requests and documents filed in response thereto shall be filed with all parties, but should not be filed with the Office unless directed by the Judge or when in support of a motion to compel, motion for protective order, or motion to quash.

**§155.25. Prehearing Conferences.**

(a) When appropriate, the judge may hold a prehearing conference to resolve matters preliminary to the hearing.

(b) A prehearing conference may be convened to address the following matters:

- (1) issuance of subpoenas;
- (2) factual and legal issues;
- (3) stipulations;
- (4) requests for official notice;
- (5) identification and exchange of documentary evidence;
- (6) admissibility of evidence;
- (7) identification and qualification of witnesses;
- (8) motions;
- (9) discovery disputes;
- (10) order of presentation;
- (11) scheduling;
- (12) settlement conferences; and
- (13) such other matters as will promote the orderly and prompt conduct of the hearing.

(c) Among other matters, as stated in subsection (b) of this section, an administrative law judge may order

(1) that the parties discuss the prospects of settlement or stipulations and be prepared to report thereon at the prehearing conference (see §155.39 of this title (relating to Telephone Hearings));

(2) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(3) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(4) that the parties make a plain and concise statement of undisputed facts and issues at the prehearing conference.

(d) At the discretion of the judge, all or part of the prehearing conference may be recorded or transcribed.

(e) The administrative law judge may, after the Office acquires jurisdiction, issue an order requiring a prehearing statement of the case. Parties shall supplement this statement on a timely basis. The parties shall, within 14 days of service, file a statement specifying the parties present position on any or all of the following as required by the administrative law judge:

(1) the disputed issues or matters to be resolved;

(2) a brief statement of the facts

or arguments supporting the party's position in each disputed issue or matter;

(3) a list of facts or exhibits to which a party will stipulate; and

(4) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery.

**§155.33. Motions.**

(a) Unless otherwise provided by these rules:

(1) a party may move for appropriate relief before or during a hearing;

(2) a party shall submit all motions in writing or orally at a hearing;

(3) written motions shall:

(A) be filed no later than 15 days before the date of the hearing, provided, for good cause stated in the motion the judge may permit a written motion subsequent to that time;

(B) state concisely the question to be determined;

(C) be accompanied by any necessary supporting documentation; and

(D) be served on each party.

(4) an answer to a written motion shall be filed on the earlier of:

(A) Seven days after receipt of the motion; or

(B) on the date of the hearing.

(5) on written notice to all parties or with telephone consent of all parties, the judge may schedule a conference to consider a written motion;

(6) the judge may reserve ruling on a motion until after the hearing;

(7) the judge may issue a written decision or state the decision on the record;

(8) if a ruling on a motion is reserved, the ruling shall be in writing and may be included in the judge's proposed decision; and

(9) the filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

(b) Continuances may be granted by the Office in accordance with Administrative Procedure and Texas Register Act (APTRA), the agency's statute and rules,

and applicable case law. Motions for continuance shall be in writing or stated in record, and shall set forth the specific grounds upon when the party seeks the continuance.

(c) Unless made during a prehearing or hearing, for all motions for continuance, cancellation of a scheduled proceeding or extension of an established deadline filed fewer than 10 days before the date or deadline in question, the movant must contact the other party(ies) and must indicate in the motion whether it is opposed by any party(ies). Further, if a continuance to a date certain is sought, the motion must include a proposed date or dates (preferably a range of dates) and must indicate whether the party(ies) contacted agree on the proposed new date(s).

**§155.37. Conduct of Hearings.**

(a) On a genuine issue in a contested case, each party is entitled to:

(1) call witnesses;

(2) offer evidence;

(3) cross-examine any witness called by a party; and

(4) make opening and closing statements.

(b) Once the hearing is begun the parties may be off the record only when the judge permits. If the discussion off the record is pertinent, then the judge will summarize the discussion for the record.

(c) Objections shall be timely noted in the record. See Rule 103, Texas Rules of Civil Evidence.

(d) The judge may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of hearing.

(e) The judge may question witnesses and/or direct the submission of supplemental data.

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 August 5, 1992.

TRD-9210664

Steven L. Martin  
Chief Administrative Law  
Judge  
State Office of  
Administrative Hearings

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 475-4993

## Part XII. Advisory Commission on State Emergency Communications

### Chapter 251. Regional Plans

#### • 1 TAC §251.3

The Advisory Commission on State Emergency Communications proposes new §251.3, concerning guidelines for addressing funds. The policy and guidelines are for use in emergency communications regional planning and funding for statewide addressing projects. The section specifies the types of funds available for distribution, parties eligible for such funds, procedural requirements, and the approval process associated with requests for funds.

Mary A. Boyd, 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.

Ms. Boyd 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 improved effectiveness of 9-1-1 call delivery by more easily locating 9-1-1 callers, in counties who utilize funds toward completion of rural address assignment. 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 Mary Boyd, Executive Director, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

The new section is proposed under the Health and Safety Code, Chapter 771, §771.051, 771.056, and 771.057, which provides the Advisory Commission on State Emergency Communications with the authority to develop and amend a regional plan for the establishment and operation of 9-1-1 service throughout a 9-1-1 region that meets the standards established by the commission according to the procedures determined by the commission.

#### §251.3. Guidelines for Addressing Funds.

(a) Policy. The Advisory Commission on State Emergency Communications adopted a policy on March 11, 1992, regarding rural addressing and the use of state addressing funds. This information provides a guide whereby state addressing funds are distributed to local governments for the purpose of establishing addresses. Street addresses are essential to E9-1-1 systems utilizing the Automatic Location Identifier feature which displays locations of 9-1-1 callers.

(b) Definitions. The following words and terms, when used in this section,

shall have the following meanings, unless the context clearly indicates otherwise.

(1) Addressing activities—Work associated with the initial inventory of a county for the purposes of rural addressing, conversion of box and route numbers to street addresses, correction of existing address errors, notification to residents of new addresses, resolution of address assignment problems, and installation of new street signs.

(2) Addressing pool funds—Funds directed to statewide addressing use including but not limited to federal or state grants, contributions, donations, and telephone rate case distributions but excluding Service Fee, either restricted or unrestricted in use.

(3) Cost-estimate worksheet—A form which is used to list and calculate the costs and funds needed for addressing activities in a county.

(4) Emergency communications district—

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, or D, Chapter 772.

(5) Local funds—Funds provided by local government from general revenue, in-kind services, and other local sources for addressing.

(6) Regional plan—Each regional planning commission shall develop a plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the advisory commission.

(7) Regional Planning Commission—Regional Planning Commission means a commission established under Chapter 391, Local Government Code, also referred to as a regional council of governments (COG).

(8) Restricted funds—Addressing Pool Funds for which the contributing agency has required certain conditions to be met in distributing funds for addressing.

(9) Road mile count—County road miles based upon most current data from the Texas Department of Transportation.

(10) Service fee—Except as otherwise provided by Subchapter D, Health and Safety Code 771, the advisory commission may impose a 9-1-1 emergency service fee on each local exchange access line or

equivalent local exchange access line, including lines of customers in an area served by an emergency communication district participating in the applicable regional plan.

(11) Unaddressed county—A county in Texas which has not completely notified residents of new addresses under a county addressing process.

(12) Unaddressed housing count—The calculated number of housing units in a county based upon rural population data from the most recent United States Census reports.

(13) Unaddressed land parcel count—The estimated number of county land parcels which have no address as calculated by counties to be addressed.

(14) Unrestricted funds—Addressing Pool Funds for which the contributing agency does not require conditions to be met in distributing funds for addressing.

(c) Policy and procedures. The commission authorizes and allocates addressing funds to include addressing pool funds and Service Fees. Addressing pool funds may include funds not actually provided ACSEC, but placed under its control by a third party specifically for the purposes of this program.

(1) Any unaddressed county implementing or operating 9-1-1 service, or a COG or emergency communication district applying on behalf of such a county are considered eligible for funds.

(2) Unrestricted addressing pool funds will be allocated by adding all counties' numbers of road mileage, unaddressed housing units, and unaddressed land parcels. The total of those numbers will be compared against each county's individual total and a proportionate share of funds will be allocated to each county. The commission may establish a minimum amount of Addressing Pool Funds to be allocated to each eligible county in order to ensure adequate minimum funding to support addressing activities.

(3) Restricted addressing pool funds will be allocated in accordance with those restrictions placed upon their distribution by the contributing agency.

(4) As available, restricted addressing pool funds will be allocated first to eligible applicants, followed by unrestricted addressing pool funds.

(5) Service fees may be allocated to counties after taking into account those costs associated with 9-1-1 monthly recurring expenses, ALI upgrade, and ancillary equipment requirements.

(6) The addressing pool funds and Service Fees may be used only for costs associated with addressing activities.

(7) A county must provide one dollar of local funds for every three dollars (25% match) allocated or authorized under this fund.

(8) Under no circumstances will funds be allocated or approved under this program that exceed total net funds needed as calculated by the cost-estimate worksheet.

(9) In accordance with this policy, counties, or emergency communications districts which have already started addressing activities and incurred costs may request reimbursement of those documented addressing expenditures, if costs were incurred since January 1, 1991. The commission may consider reimbursement of eligible expenses prior to that date on a case by case basis.

(10) Funds under this program must be requested by a deadline to be established by the commission. Funds may be awarded by the commission following this established date on a case by case basis.

(d) Requesting addressing pool funds and service fees. A regional plan amendment from a COG or a request from an emergency communications district is required as a means of requesting funds under this program, as described below.

(1) A regional plan amendment or request for funds must contain the following:

(A) An addressing project narrative;

(B) A completed cost-estimate worksheet including identification of the required local match;

(C) An approved projected COG financial cashflow if Service Fees are requested;

(D) If necessary, a request to amend the COG administrative budget for additional staff, whether through hiring or through personnel contract services.

(2) Regional plan amendments and requests for funds under this program should be submitted by the COG or the emergency communications district to the commission five weeks prior to the scheduled commission meeting at which the amendment or request will be considered.

(e) Reporting. A performance and financial report is to be submitted to the commission in accordance with established commission policy. Where a COG or an emergency communication district is the primary contractor but a county is providing services under this program, said reports

shall be provided to the commission prior to COG or emergency communications district reimbursement of related county expenses. Monthly financial reports are to be provided utilizing Form 269a, under the contractual column. Counties, emergency communications districts, and COGs are required to follow local government statutes as they apply to competitive proposals for purchase of services and equipment.

(f) Cost estimate worksheet. The Cost-Estimate Worksheet is adopted by reference, and can be obtained from the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746 (512) 327-1911.

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 August 4, 1992.

TRD-9210623

Mary A. Boyd  
Executive Director  
Advisory Commission on  
State Emergency  
Communications

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 327-1911

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 1. Administration

##### Subchapter A. General Policies and Procedures

###### • 10 TAC §1.2

The Texas Department of Housing and Community Affairs (TDHCA) proposes new §1.2, concerning the implementation of a formal system to investigate and resolve complaints that TDHCA has the authority to resolve. Complaints concerning the Texas Community Development Program and TDHCA's administration of the Community Services Block Grant and Low-Income Home Energy Assistance Program are governed by TDHCA's Block Grant Complaint system at §1.11 and §1.13.

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

Mr. Blankenship 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 timely,

professional, and fully coordinated responses to complaints about TDHCA operations. 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 Anne O. Paddock, Acting General Counsel, 811 Barton Springs, Suite 500, Austin, Texas 78704, within 30 days after the date of this publication.

The new section is proposed under Texas Civil Statutes, Article 4413(501) §1.18, which provide TDHCA with the authority to develop procedures by which complaints are filed with the department.

#### §1.2. Department Complaint System.

(a) Purpose. The purpose of this section is to establish the procedures by which complaints that the department has the authority to resolve are answered.

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

(1) Complaint—A written complaint that a person believes the department has the authority to resolve, other than a complaint about the quality of services funded by a block grant administered by the department. Block grant complaints are governed by §1.11 and §1.13 of this title (relating to General Provisions; Complaint System).

(2) Department—The Texas Department of Housing and Community Affairs.

(3) Person—Any individual, other than an employee of the department, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(c) Procedures. A person who has a written complaint may submit such complaint to the department's internal auditor or to any employee of the department for submission to the internal auditor.

(1) The internal auditor assigns a control number to the complaint, reviews the complaint, investigates, or causes an investigation to be completed, and submits the department's findings to the executive director of the department.

(2) The executive director shall either notify the complainant of the resolution of the complaint within 15 business days after the date the internal auditor received the complaint, or notify the complainant, within such period, of the date the complaint can be resolved.

(3) The executive director shall notify the complainant of the status of the complaint at least quarterly and until the

final disposition of the complaint unless the notice would jeopardize an undercover investigation.

(4) The internal auditor shall maintain an information file about each complaint.

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 July 30, 1992.

TRD-9210541 Susan J. Leigh  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 475-3917

## Subchapter B. Block Grants

### • 10 TAC §1.13

The Texas Department of Housing and Community Affairs (TDHCA) proposes an amendment to §1.13, concerning the formal complaint system established to investigate complaints received about programs funded by federal block grants administered by TDHCA. The proposed amendment changes the person to whom complaints are submitted.

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

Mr. Blankenship 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 the more efficient disposition of complaints. 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 Anne O. Paddock, Acting General Counsel, P.O. Box 13941, Austin, Texas 78711, within 30 days of the date of this publication.

The amendment is proposed under Texas Civil Statutes, Article 4413(501) §1.07, which provides TDHCA with the authority to adopt and enforce rules for the conduct of its affairs.

#### §1.13. Complaint System.

(a) A recipient who has a comment or complaint about the quality of services funded by a block grant administered by the department may submit such comment or complaint in writing to the internal auditor of [director of the division within] the department [which is responsible for administering the block grant].

(b) The internal auditor [director of the division to which the comment or complaint is submitted] shall transmit a copy of the comment or complaint to the entity which is the subject of the comment or complaint within two calendar days for comments or complaints arising under the Texas Community Development Program or within five calendar days for all other block grant programs after the date the comment or complaint was received by the internal auditor [division].

(c) The entity shall complete its investigation of the comment or complaint and submit its findings, in writing, to the internal auditor [appropriate division director] within seven business days for Texas Community Development Program comments or complaints or 20 calendar days for all other entities after the date the entity received the comment or complaint or notify the internal auditor [division director.] within such period, of the date the investigation can be completed.

(d) The executive director of the department [appropriate division director] shall notify the complainant of the department's [division's] and the entity's findings before the 15th business day for the Texas Community Development Program comments or complaints or the 31st calendar day for all other comments or complaints after the date the comment or complaint was received by the internal auditor [division] or the executive director [division] shall notify the complainant, within such period, of the date the investigation can be completed.

(e) The executive director of the department shall notify the complainant of the status of the complaint at least quarterly and until the final disposition of the complaint unless the notice would jeopardize an undercover investigation.

(f)[(e)] The department shall consider the history of complaints regarding an entity in determining whether to renew a contract for the use of block grants funds by the entity.

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 July 31, 1992.

TRD-9210540 Susan J. Leigh  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 475-3917

## Chapter 49. Low-Income Rental Housing Tax Credit

### • 10 TAC §§49.1-49.13

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

The Texas Department of Housing and Community Affairs proposes the repeal of §§49.1-49.13, concerning low-income rental housing tax credit rules. The sections are repealed in order to enact new sections conforming to the requirements of new regulations enacted under the Internal Revenue Code of 1986, as amended, which provides for credits against federal income taxes for owners of qualified low-income rental housing projects.

Ginger Brown, deputy for housing finance and development, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Brown, also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be permitting the adoption of new rules for the allocation of low-income housing tax credit authority within the State of Texas, thereby enhancing the state's ability to provide safe and sanitary housing for Texans through the Tax Credit Program administered by the department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Virginia Brown, P.O. Box 13941, Austin, Texas 78711-3941.

The repeals are proposed under Texas Civil Statutes, Article 4413 (501), which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the department and its programs and Executive Order AWR-91-4 (June 17, 1992), which provides this department with the authority to make housing credit allocations in the State of Texas.

#### §49.1. Scope.

#### §49.2. Definitions.

#### §49.3. State Housing Credit Ceiling.

#### §49.4. Applications; Market Study; Reservations; Notifications; Commitments; Extensions; Carryover Allocation; Agreements and Elections; Extended Commitments.

#### §49.5. Set-asides, Reservations, and Preference.



§49.6. *Threshold Criteria; Evaluation Factors; Selection Criteria; Bonus Points; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.*

§49.7. *Housing Credit Allocations.*

§49.8. *Agency Records; Certain Required Filings.*

§49.9. *Agency Responsibilities.*

§49.10. *Application, Reservation, and Extension Fees.*

§49.11. *Manner and Place of Filing Applications.*

§49.12. *Withdrawals, Amendments, Cancellations.*

§49.13. *Waiver and Amendment of Rules.*

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

Issued in Austin, Texas, on August 4, 1992.

TRD-9210686

Susan J. Leigh  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 475-3917

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter K. Safety Requirements

###### • 16 TAC §5.173

The Railroad Commission of Texas proposes an amendment to §5.173, concerning the requirement of motor carriers to maintain drivers' daily logs. The amendment is proposed as a result of a petition for rulemaking filed by Brink's, Incorporated. The amendment exempts armored contract carriers operating pursuant to armored contract carrier permits issued by the commission from the requirements of maintaining drivers' daily logs.

Jackye Greenlee, assistant director-central operations, 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.

Barbara H. Owens, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of administering the section will be the elimination of record keeping already required of armored contract carriers by §5.101. 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 may be submitted within 30 days to Barbara H. Owens, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers.

###### §5.173. *Driver's Daily Log.*

(a) Except as provided in subsections (c), [and] (e), and (f) of this section, every motor carrier and every motor bus company shall require that a driver's daily log shall be made by each of its drivers, and every driver who operates a motor vehicle subject to the jurisdiction of the Railroad Commission of Texas shall make a daily log. Drivers' logs shall be made on and in accordance with the instructions of BMC-59, driver's daily log, as revised from time to time, as prescribed by the department of transportation, and they shall reflect the true facts as to the activities of each driver for the full 24 hours of each day.

(b)-(e) (No change.)

(f) Armored contract carriers providing service under armored contract carrier permits issued by the Railroad Commission of Texas, in lieu of complying with the provisions of subsection (a) of this section, shall maintain drivers' daily logs by the proper completion of daily armored car route manifests as provided in §5.101 of this title (relating to Motor Carriers Providing Service in Armored Cars and Trucks).

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 August 3, 1992.

TRD-9210661

Nolan Ward  
Hearings Examiner, Legal  
Division-General Law  
Railroad Commission of  
Texas

Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 463-7095

## TITLE 22. Examining Boards

### Part XXVI. Texas Board of Licensure for Professional Medical Physicists

#### Chapter 601. Medical Physicists

##### • 22 TAC §§601.1-601.18

*(Editor's Note: The Texas Board of Licensure for Professional Medical Physicists proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Board of Licensure for Professional Medical Physicists (board), with the approval of the Texas Department of Health (department), proposes new §§601.1-601.18, concerning the licensure and regulation of medical physicists. The sections cover purpose and scope; definitions; the board's operation; fees; exemptions; application procedures; licensure without examination; licensure by examination; temporary licensure; license issuance and license holder requirements; license renewal; application and renewal processing times; petitioning the board for adoption of a rule; code of ethics; licensing persons with criminal backgrounds; violations, complaints, and subsequent actions; surrender of license; and formal hearing procedures.

Donna Hardin, program administrator, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated cost of \$21,000 per year for fiscal years 1993-1997; however there will be an estimated increase in revenue of \$31,250 for fiscal year 1993 and \$18,750 per year for fiscal years 1994-1997. There is no anticipated effect on local government.

Ms. Hardin also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure the protection of the health, safety, and welfare of the citizens of Texas from the harmful effects of excessive radiation and from the public threat if medical physics is practiced by incompetent persons. The anticipated cost of compliance for small businesses will be the cost of employing a licensed medical physicist to perform radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation emitting equipment and radiopharmaceuticals and consultations with physicians to assure radiation dosage to specific patients. The cost of compliance for all businesses will be directly related to the number and complexity of radiation-emitting machines and the amount of radiopharmaceuticals used for medical purposes. The possible economic cost to persons who are



required to comply with the sections as proposed will be the fees set out in §601.4 of these new rules.

Comments on the proposal may be submitted to Gerald Guthrie, Director, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6628. Public comments will be accepted for 30 days after publication of the sections in the Texas Register. In addition, a public hearing will be held at 10 a.m., Wednesday, September 9, 1992, in the Texas Department of Health Annex, 8407 Wall Street, Room S400, Austin.

The new sections are proposed under the Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, §11, which provides the Texas Board of Licensure for Professional Medical Physicists with the authority to adopt rules, with the approval of the Texas Department of Health, that are reasonably necessary for the proper performance of its duties under the 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 August 3, 1992.

TRD-9210561

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

Proposed date of adoption: October 24, 1992

For further information, please call: (512) 834-6628

◆ ◆ ◆  
**TITLE 25. Health Services**  
**Part I. Texas Department**  
**of Health**

**Chapter 145. Long Term Care**

**Subchapter G. Standards for**  
**Nursing Homes That Cover**  
**Licensure and Medicaid Cer-**  
**tification.**

• **25 TAC §145.111**

The Texas Department of Health (department) proposes an amendment to §145.111, concerning standards for nursing homes jointly developed by the department and the Texas Department of Human Services (TDHS) that apply to licensure and medicaid certification (standards). The standards are in TDHS rules in 40 TAC §§19.1-19.2216, which the department adopts by reference in §145.111.

Accordingly, the department's amendment to §145.111 will incorporate the repeal of existing 40 TAC §19.2012 and new 40 TAC §§19.2201-19.2209, and §§19.2211-19.2216, concerning nursing facility remedies for contract violations being proposed by TDHS in the August 4, 1992, issue of the Texas Register. This amendment is being repropo-

sed by cause of comments and recommendations by the joint TDHS and department committee. By proposing to adopt the repropo-

TDHS amendments by reference the department will utilize TDHS rules in §§19.2201-19.2209 and §§19.2211-19.2216 as administrative penalty rules for nursing facilities which participate in the medicaid program.

In addition, the department's amendment to §145.111 will incorporate TDHS's proposed amendments published in the July 31, 1992, issue of the Texas Register to existing 40 TAC §§19.302, 19.810, 19.1401, and 19.1503, concerning transfer and discharge, nursing practices, infection control, and applicable codes and standards. These amendments correct references to state/federal laws and health practitioners' licensing acts or clarify current standard wording.

Mary Sidlenik, executive assistant, Bureau of Long Term Care, has determined that for each year of the first five-year period the section will be in effect as proposed, there will be no fiscal implications for state government as a result of enforcing or administering the section. There is a possibility of a fiscal impact on large and small nursing facilities operated by local government. The impact is difficult to determine exactly since the TDHS remedies rules offer a variety of remedy options for each facility based on the contract violations cited; however the option of a monetary penalty is one of the many options (see §19.2203(a)). It is estimated that the increased cost to a large or small facility may range from a minimum of \$2.50 to a maximum of \$10 per day per certified medicaid bed for a minimum of 15 days. The cost may be further increased by doubling the per day certified bed amount if the facility has claimed to correct the contract violation by the end of the 15 days, but is later found by the department surveyors to have failed to do so.

Ms. Sidlenik 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 as proposed will be that nursing facility residents and their families will clearly understand the rules for assessment of monetary penalties and the rules will be clarified for providers, state surveyors, and appeal hearing officers. In addition, department staff and the public will more clearly understand the requirements because they will be updated to current statutory references or laws. The impact on small business will be the same as previously mentioned concerning facilities operated by local governments. There is no anticipated cost to persons who are required to comply with the section as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Janice M. Caldwell, Dr.P.H., Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3185, at phone (512) 458-7709. Comments will be accepted for 30 days following the date of publication of this proposal in the Texas Register.

The amendment is proposed under the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by

law on the board, the department, and the commissioner of health; and §222.0255, which provides the department and the Texas Department of Human Services with the authority to jointly develop one set of standards for nursing homes that applies to licensure and to certification for participation in the medical assistance program under Chapter 32, Human Resources Code, and to adopt by rule the standards and any amendments to them.

*§145.111. Standards for Nursing Homes*  
*Jointly Developed by the Texas Department*  
*of Health and the Texas Department of*  
*Human Services that apply to Licensure and*  
*Medicaid Certification.*

(a) The Texas Department of Health proposes to adopt by reference the Texas Department of Human Services rules 40 TAC, §§19.1- 19.2216 [19.2107], concerning Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification as amended October [April], 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 August 5, 1992.

TRD-9210690

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

Proposed date of adoption: October 24, 1992

For further information, please call:(512) 458-7709

◆ ◆ ◆  
**TITLE 31. NATURAL RE-**  
**SOURCES AND CON-**  
**SERVATION**

**Part II. Texas Parks and**  
**Wildlife Department**

**Chapter 55. Law Enforcement**

**Subchapter D. Operation Game**  
**Thief Fund**

• **31 TAC §55.112**

The Operation Game Thief Committee proposes an amendment to §55.112, concerning donations and disbursements. This proposed amendment is a result of legislative enactment of House Bill 1195, 70th Legislature, which authorizes the Operation Game Thief Committee more authority in implementing rules and establishing procedures for the payment of rewards and maintaining records in the Operation Game Thief Program.

Jim Dickinson, deputy 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 this proposal.

Mr. Dickinson 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 the maximizing of funds available for rewards to eligible applicants thereby increasing the protection of wildlife and fisheries resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who participate in this program if this proposal is enacted.

Comments on the proposal may be submitted to Steve Pritchett, Operation Game Thief Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4626 or 1-800-792-1112, extension 4626.

The amendment is proposed under Texas Parks and Wildlife Code, Chapter 12, Subchapter C, which provides the Operation Game Thief Committee with the authority to adopt rules for the implementation of the Operation Game Thief Program.

§55.112. *Donations and Disbursements.*

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

(c) Donations received shall be deposited by the director in interest-bearing accounts (operation game thief fund) insured by the Federal Deposit Insurance Corporation or invested in United States Treasury bills and bonds or certificates of deposit at the best available yields.

(d) (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 August 3, 1992.

TRD-9210553 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 4, 1992

For further information, please call: 1-800-792-1112, ext. 4433 or (512) 389-4433



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part XI. Texas Juvenile Probation Commission

#### Chapter 341. Policies and Procedures

##### • 37 TAC §341.21

The Texas Juvenile Probation Commission proposes an amendment to §341.21, concerning a memorandum of understanding on service delivery to runaways between the Texas Juvenile Probation Commission and the Texas Department of Human Services. The amendment will eliminate the need for annual publication of the rule for changes of the formula to calculate high number of runaways.

Steve Bonnell, deputy 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. Bonnell 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 the improved coordination for runaway children's services at the community level. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Steve Bonnell, Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

The amendment is proposed under the Texas Human Resources Code, §141.0475, which provides the Texas Juvenile Probation Commission with the authority to develop a memorandum of understanding and model cooperative agreement.

##### §341.21. *Memorandum of Understanding on Service Delivery to Runaways.*

(a) (No change.)

(b) This law requires TJPC and TDHS to develop a model cooperative

agreement. The agencies must require local TDHS agents and local juvenile probation departments receiving state aid to sign county level agreements and to review [not later than September 1, 1990, and to] and update the agreements annually as needed. The parties adopt a model cooperative agreement by reference. Copies of the model are available at the TJPC office, 2015 South IH 35, Austin, Texas 78741 and at the TDHS office, 701 West 51st Street, Austin, Texas 78751. TJPC agrees to give the model agreement to the chief of each juvenile probation department that receives state aid. TDHS agrees to give it to the appropriate operations directors and program administrators for families and children. TDHS agrees to provide TJPC the name of its staff person who will sign the agreement for it in each county. The county level agreements must:

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

(c) TJPC and TDHS must designate the number of runaways for each county that shall be considered as a high number.

(1) A county shall be considered to have a high number of runaways if the actual runaway referrals to the department shown in the most recent TJPC annual "Texas Juvenile Statistical Report" exceeds 105% of the statewide mean for runaway arrests plus 25. The statewide mean number of runaways is calculated according to the following formula: Most recent uniform crime reports of runaway arrests reported in the Texas Department of Public Safety's annual publication "Crime in Texas" divided by the juvenile population projections published in the most recent TJPC annual "Texas Juvenile Probation Statistical Report" = Statewide Mean. [A county shall be considered to have a high number of runaways if the number of arrests for runaway reported in the newest Uniform Crime Reports is greater than or equal to 105 percent of the statewide mean, plus 25. The statewide mean number of runaways is calculated according to the following formula:

Most recent Uniform Crime  
Reports of runaway arrests  
population

ages 10-17 = statewide mean = 137/10,000]

[graphic]

(2) TJPC will identify and notify each county which has actual runaway referrals greater than or equal to 105% of the statewide mean plus 25 that its [The] local agreement [in a county with a high number of runaways] must include plans for presentation to the commissioners court of the county of a request for funds to develop or contract for emergency services for runaways.

[(3) The parties adopt Appendix A by reference. Copies are available at the TJPC office, 2015 South IH 35, Austin, Texas 78741, and the TDHS office, 701 West 51st Street, Austin, Texas 78751. Appendix A shows the actual uniform crime reports of runaway arrests greater than or equal to 105% of the statewide mean plus 25 are identified.]

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

(f) To prepare the report described in subsection (e) of this section, TDHS agrees to collect and report the data in Appendix A [B], its "Services to Runaways and At-Risk Youth" monthly summary statistics. The parties adopt Appendix A [B] by reference. Copies are available at the TJPC office, 2015 South IH 35, Austin, Texas 78741, and at TDHS offices at 701 West 51st Street, Austin, Texas 78751.

(g) To prepare the report described in subsection (e) of this section, TJPC agrees to collect and report the information about runaways contained in its annual [calendar year 1990] "Texas Juvenile Probation Statistical Report." In addition, TJPC agrees to add the following question to the annual survey completed by each contracting juvenile probation department: How many runaway referrals were not served because of staff or resource shortfalls?

(h) TJPC and TDHS agree to meet annually, prior to August 31, [in April 1992] to consider whether changes should be made in their agreement, and to identify and notify those counties having a high number of runaways.

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 August 3, 1992.

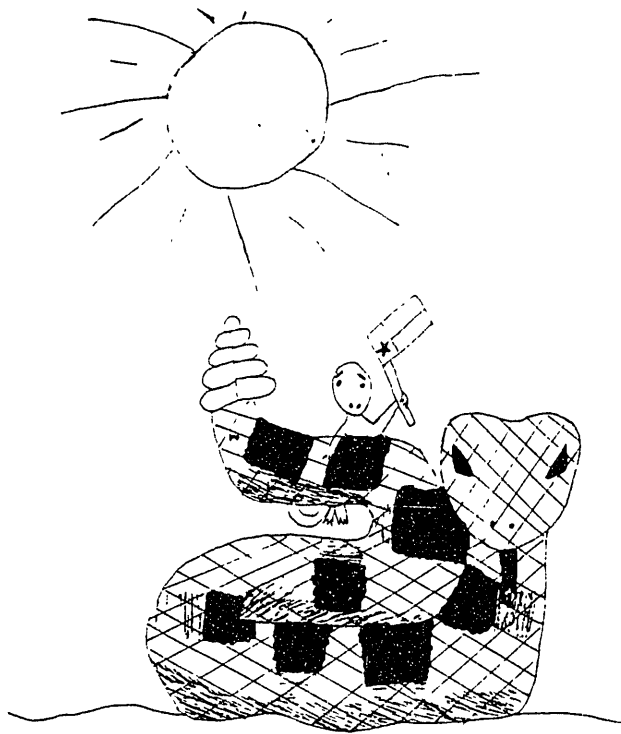
TRD-9210624

Bernard Licarione, Ph.D.  
Executive Director  
Texas Juvenile Probation  
Commission

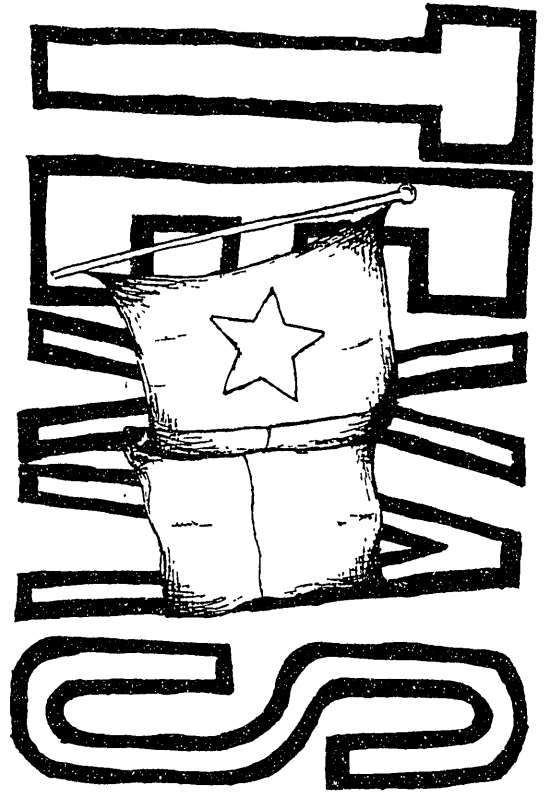
Earliest possible date of adoption: September 11, 1992

For further information, please call: (512) 443-2001

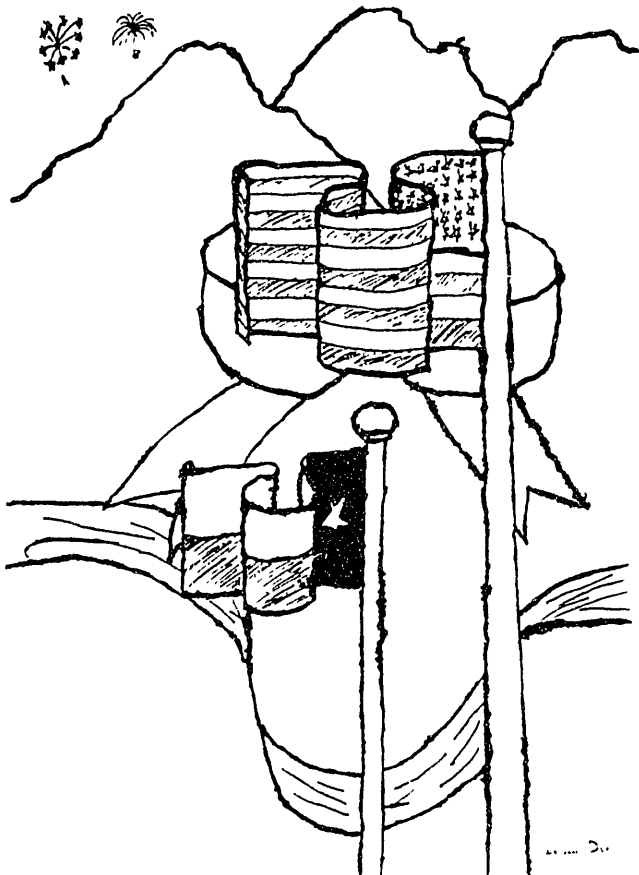
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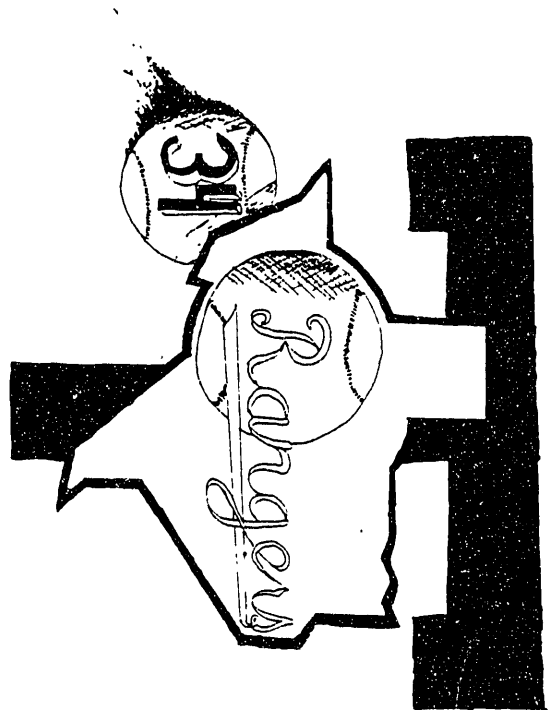


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# Withdrawn Sections

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

## TITLE 1. ADMINISTRATION

### Part VII. State Office of Administrative Hearings

#### Chapter 155. Rules of Procedures

- 1 TAC §§155.23, 155.25, 155.33, 155.37

The State Office of Administrative Hearings has withdrawn from consideration for permanent adoption a proposed new §§155.23, 155.25, 155.33, and 155.37 which appeared in the April 10, 1992, issue of the *Texas Register* (17 TexReg 2565). The effective date of this withdrawal is August 5, 1992.

Issued in Austin, Texas, on August 5, 1992

TRD-9210663

Steven L. Martin  
Chief Administrative Law  
Judge  
State Office of  
Administrative Hearings

Effective date: August 5, 1992

For further information, please call: (512) 475-4993



## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 145. Long-Term Care

#### Subchapter G. Standards for Nursing Homes That Cover Licensure and Medicaid Certification

- 25 TAC §145.111

The Texas Department of Health (department) withdraws the proposed amended §145.111, concerning standards for nursing homes that cover licensure and medicaid certification. The amendment was published in the May 19, 1992 issue of the *Texas Register* (17 TexReg 3714). The amendment is being repropoed in this issue of the *Texas Register*.

Issued in Austin, Texas, on August 5, 1992.

TRD-9210709

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

Effective date: August 5, 1992

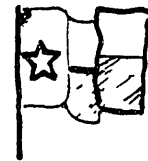
Proposal publication date: May 19, 1992

For further information, please call: (512) 458-7709

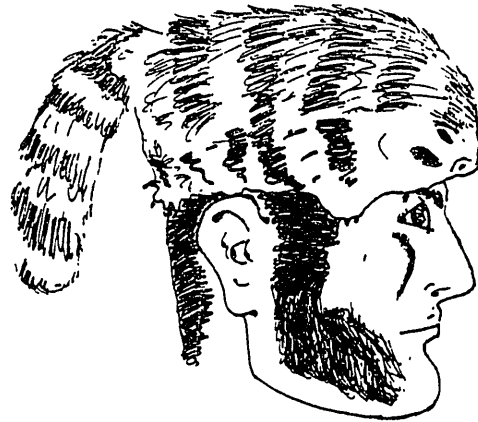




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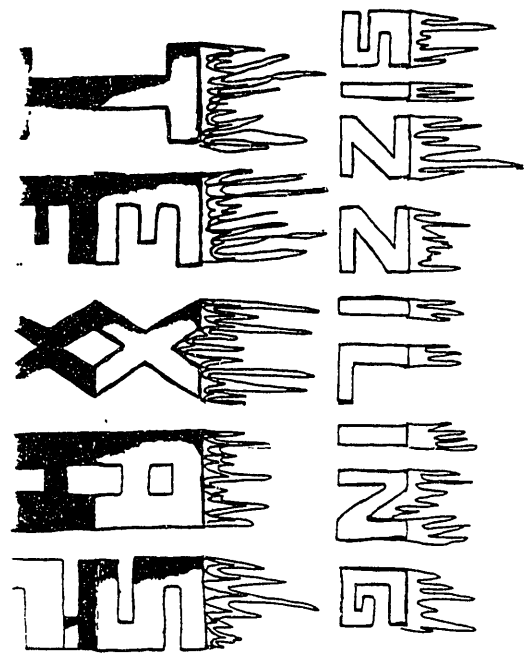


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# Adopted Sections

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 1. Administration Part II. Texas Ethics Commission

### Chapter 10. Practice and Procedure

#### Subchapter D. Miscellaneous • 1 TAC §10.311

The Texas Ethics Commission adopts new §10.311, previously proposed as §13.1, concerning substitution or replication of forms, with changes to the proposed text as published in the May 5, 1992, issue of the *Texas Register* (17 TexReg 3209). The section number has been renumbered as previously indicated.

The new section concerns the substitution or replication of forms. This section allows the executive director to approve substitute forms adopted by commission rules and the guidelines therefore. The section will prevent the unnecessary duplication of forms by those persons required to file reports with the Texas Ethics Commission. The change in the section number is due to an inadvertent filing of other sections under section numbers previously assigned to the Governor's Office.

The new section will ease the burden of filing reports with the commission by allowing alternative filing forms which are substantially similar to those forms adopted by commission rule.

No comments were received regarding adoption of the new section.

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

#### §10.311. Substitution or Replication of Forms.

(a) A report filed with the commission shall be filed on the appropriate form adopted by commission rule, or:

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

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

(b) The executive director may approve and certify a form or format for filing

reports with the commission if he or she finds that the form or format:

(1) provides for disclosure of all the information required or requested on the form adopted by commission rule;

(2) is substantially similar in paper size and color, layout, and format to the form adopted by commission rule;

(3) the executive director determines that use of the substitute form or format will not be confusing to those who obtain information from that form.

(c) The approval and certification of a form or format by the executive director shall be written, signed by the executive director, include the effective date of the certification, and state that certification may be revoked if the form adopted by commission rule is revised and the substitute form no longer qualifies for approval and certification under subsection (b) of this section.

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 July 31, 1992.

TRD-9210563 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: August 24, 1992

Proposal publication date: May 5, 1992

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

### Chapter 20. Campaign Financing

#### • 1 TAC §20.2

The Texas Ethics Commission adopts new §20.2, previously proposed as §6.13, concerning reporting forms, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3331). The section number has been renumbered as indicated above.

The new section establishes the form for appointing a state chair candidate's campaign treasurer in accordance with Title 15 of the Election Code. The change in the section number is due to an inadvertent filing of other sections under a section numbers previously assigned to the Governor's Office.

The new section will provide the public with the form necessary to comply with Title 15 reporting requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the statutory requirements of Title 15 of the Election Code.

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 July 31, 1992.

TRD-9210564 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: August 24, 1992

Proposal publication date: May 8, 1992

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

### Subchapter B. Reporting Forms • 1 TAC §20.4

The Texas Ethics Commission adopts new §20.4, previously proposed as §6.14, concerning reporting forms, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3331). The section number has been renumbered as indicated above.

The new section establishes the form for the reporting of contributions and expenditures by a candidate or officeholder for state chair of a political party in accordance with Title 15 of the Election Code. The change in the section number is due to an inadvertent filing of other sections under a section numbers previously assigned to the Governor's Office.

This section will provide the public with the form necessary to comply with Title 15 reporting requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the statutory requirements of Title 15 of the Election Code.

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 July 31, 1992.

TRD-9210565 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: August 24, 1992

Proposal publication date: May 8, 1992

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

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• 1 TAC §20.6

The Texas Ethics Commission adopts new §20.6, previously proposed as §6.15, concerning reporting forms, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3331). The section number has been renumbered as indicated above.

The new section establishes the form for designating a final report by a candidate for state chair of a political party in accordance with Title 15 of the Election Code. The change in the section number is due to an inadvertent filing of other sections under a section numbers previously assigned to the Governor's Office.

This section will provide the public with the form necessary to comply with Title 15 reporting requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the statutory requirements of Title 15 of the Election Code.

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 July 31, 1992.

TRD-9210566 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: August 24, 1992

Proposal publication date: May 8, 1992

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

◆ ◆ ◆  
• 1 TAC §20.8

The Texas Ethics Commission adopts new §20.8, previously proposed as §6.17, concerning reporting forms, with changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3331). The changes were not substantive; they reflect corrections of typographical errors, and minor changes as to form. Additionally, the section number has been renumbered as previously indicated.

The new section establishes the form for the reporting of contributions and expenditures by

political parties accepting contributions from corporations and labor unions in accordance with Title 15 of the Election Code. The form has been corrected to aid the Texas Ethics Commission in processing it. Typographical errors have been corrected and minor revisions as to form to correct erroneous requirements were made. The change in the section number is due to an inadvertent filing of the other sections under section numbers previously assigned to the Governor's Office.

This section will provide the public with the form necessary to comply with Title 15 reporting requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the statutory requirements of Title 15 of the Election Code.

§20.8. *Political Party Sworn Report of Contributions and Expenditures.* The Texas Ethics Commission adopts by reference the *Political Party Sworn Report of Contributions and Expenditures* form prescribed by the commission on April 23, 1992. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

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 July 31, 1992.

TRD-9210567 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: August 24, 1992

Proposal publication date: May 8, 1992

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

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Subchapter C. Rules Concerning Reports

• 1 TAC §20.27, §20.29

The Texas Ethics Commission adopts new §20.27 and §20.29, previously proposed as §6.27 and §6.29 concerning rules concerning reports, with changes to the proposed text as published in the May 5, 1992, issue of the *Texas Register* (17 TexReg 3209). The changes were not substantive; the section numbers have been renumbered, as indicated above.

The new sections concern the setting of guidelines, requirements, and exceptions in regard to campaign reports required to be filed by political parties accepting corporate or labor union contributions, and the reporting schedule for a candidate for state chair, and the reporting schedule for a political committee supporting or opposing a candidate for state chair in accordance with Title 15 of the

Election Code. The change in the section numbers is due to an inadvertent filing of other sections under section numbers previously assigned to the Governor's Office.

The new sections will provide the public with guidelines, requirements, and exceptions in regard to campaign reports required to be filed with the Texas Ethics Commission by political parties, and by candidates seeking the state chair of a political party. These sections provide information as to filing, the time for filing, and how to file by mail.

No comments were received, regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the statutory requirements of Title 15 of the Election Code.

§20.27. *Reporting Schedule of a Political Party Accepting Corporate Or Labor Union Contributions.*

(a) Beginning of period. The beginning day of the period that the reports required by this rule are to cover is the later of: the stated date; the day the political party began accepting corporate or labor union contributions; or the first day after the period covered by the last required report.

(b) Reports. A political party that has accepted corporate or labor union contributions authorized by the Texas Election Code, §253.104, shall file the following reports on the following dates until the political party is no longer accepting corporate or labor union contributions and the acceptance and expenditure of all such funds has been reported.

(1) Semiannual report. A semiannual report shall be filed not later than July 15, covering the period beginning January 1 and continuing through June 30. A report shall be filed not later than January 15, covering the period beginning July 1 and continuing through December 31.

(2) Primary election report. A report shall be filed for each primary election held by the political party. The report shall be filed not later than the 8th day before the primary election, covering the period beginning January 1st and continuing through the 10th day before the primary election.

(3) General election report. One report shall be filed for the general election for state and county officers. The report shall be filed not later than the 50th day before the general election, covering the period beginning July 1 and continuing through the 61st day before the general election for state and county officers.

(c) Forms. The political party shall use the reporting forms prescribed by §20.8 of this title, (relating to Political Party





determine whether or not they completed the remaining course work in a timely manner as to ensure adequate qualifications.

Comments were received in support of the proposed amendment.

Texas Chiropractic Association and Texas Chiropractic College commented in favor of adopting the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

#### §71.10. Reexaminations.

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

(c) To be eligible for licensure, an examinee in his or her final semester of chiropractic school must satisfactorily complete the remaining course of study resulting in graduation from chiropractic college within six months from the date of successful completion of the examination for licensure. Failure to complete the course of study in the required time disqualifies the examinee for licensure until such time examinee retakes the examination and successfully passes all sections to once again be eligible for licensure.

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 August 3, 1992.

TRD-9210644

Joyce Kershner  
Acting Executive Director  
Texas Board of  
Chiropractic Examiners

Effective date: August 25, 1992

Proposal publication date: February 4, 1992

For further information, please call: (512) 343-1895

## Chapter 73. Licenses and Renewals

### • 22 TAC §73.3

The Texas Board of Chiropractic Examiners adopts new §73.3, concerning refresher courses and the requirements for continuing education, with changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1170).

The new section improves the professional standards of the board licensees. The increase in hours is to encourage licensees to keep abreast with changes in the profession.

The licensees will be required to attend and complete additional continuing education. This will help ensure that the licensee will stay up to date on the latest treatments and procedures.

Comments were received in support of the proposed new section.

Texas Chiropractic Association and Texas Chiropractic College commented in favor of adopting the new section.

The new section is adopted under Texas Civil Statutes, Article 4512b, new section which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§73.3. *Refresher Courses.* The following information is regarding continuing education courses for license renewal.

#### (1) Requirements.

(A) All licensees will annually attend and complete 16 hours of continuing education.

(B) Fourteen hours of the continuing education may be completed at any course or seminar elected by the licensee, as long as it is sponsored by a state or national association or a chiropractic college which is accredited by the Council on Chiropractic Education and approved by the board.

(C) Only those topics listed as authorized procedures in §75.7(a)-(c) of this title (relating to Authorized Practices, Techniques, and Procedures) shall be acceptable in these courses or seminars.

(D) Two hours of the continuing education must be presented by the board and will be given at the following seminars:

(i) Texas Chiropractic Association-Lubbock;

(ii) Texas Chiropractic Association Convention;

(iii) Chiropractic Society of Texas Annual Convention;

(iv) Parker College of Chiropractic Homecoming;

(v) Texas Chiropractic College Homecoming.

#### (2) Verification.

(A) Verification of the two-hour board presentation will be provided to the board office annually. The sponsoring organization will submit an alphabetical list showing the name of the attending doctor, license number, and number of hours completed.

(B) Each doctor will be responsible for documenting verification of the additional 14 hours of continuing education.

(C) Upon request by the board, the licensee will be responsible for providing verification of his continuing education for all years requested.

(D) Should the licensee fail to submit verification upon request by the board, it will be considered a violation of Texas Civil Statutes, Article 4512b, §8b(a).

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 August 4, 1992.

TRD-9210645

Joyce Kershner  
Acting Executive Director  
Texas Board of  
Chiropractic Examiners

Effective date: August 25, 1992

Proposal publication date: February 11, 1992

For further information, please call: (512) 343-1895

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 31. Special Supplemental Food Program for Women, Infants, and Children

##### • 25 TAC §31.3

The Texas Department of Health (department) adopts under federal mandate an amendment to §31.3, concerning Special Supplemental Food Program for Women, Infants and Children (WIC). Section 31.3 adopts by reference the WIC Policy and Procedure Manual. The amendment is to both the text of the section and to the manual.

The WIC Policy and Procedure Manual is part of the department's WIC State Plan of Operations which the United States Department of Agriculture (USDA) approves under authority of 7 Code of Federal Regulations Part 246. The manual incorporates all of the requirements of the federal regulations and federal management circulars into state policies and procedures. The manual is provided to and serves as the operating manual for the local health agencies that have contracts with the department to provide WIC services. The amendment in this adoption under federal mandate incorporates into the WIC Policy and Procedure Manual several USDA policy changes, the latest of which became effective on July 1, 1992.

The latest USDA policy changes concern: nutrition education lessons; double issuance of food vouchers; exception formulas for specialized medical needs; Texas WIC Income Guideline; categorical classes; nutrition education for advance issuance; food packages/allowable foods; program benefits for

homeless individuals; and issuance of dry beans/peanut butter.

The amended policies provide the following. The nutrition education lessons policy provides that the agency may use department developed module lessons and/or approved locally developed lessons to provide nutrition education contacts to WIC participants. The policy on double issuance of WIC food vouchers provides that agency shall implement an issuance routine for all clinics/participants, except those for which a written waiver has been obtained from the department, such that a two month's entitlement of food vouchers is provided to participants at each clinic visit not to exceed each participant's total entitlement within his/her certification period. Using this method, approximately one-half of the clinic's certified participants should be seen each month. The policy on exception formulas for specialized medical needs provides that exception formulas are those formulas or medical nutritional products that are not listed on the food vouchers. These products can be issued if approved by the department or designated agency staff for special medical and feeding needs. The Texas WIC income guideline for the period of April 1, 1992 to March 31, 1993, for Texas will be 185% of the Office of Management and Budget (OMB) poverty guidelines. The categorical classes policy establishes that categorical classes will be provided by the agency for all participants receiving advance food vouchers. The nutrition education for advance issuance policy provides that the agency will provide approved nutrition education information in conjunction with issuance of advance food vouchers. The food packages/allowable foods policy provides that participants may receive only those foods allowed for their category, age, maternal status, and special dietary needs. All agency must issue the standard food packages unless a participant has individual nutritional needs which cannot be met by one of these packages. The program benefits for homeless individuals policy provides that the special homeless food package may be issued only to the participants who do not have access to refrigeration and food storage/preparation facilities. The issuance of dry beans/peanut butter policy provides that pregnant and breast-feeding women and children will be issued dry beans or peanut butter. However, children less than two years of age will not be issued peanut butter.

The amendments are adopted under federal mandate for the following reasons. Under federal and state enabling legislation (The Federal Child Nutrition Act of 1966, Title 42 United States Code Annotated (USCA), §1786; the Commodity Distribution Reforms Act and WIC Amendments of 1987, Public Law 100-237; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II, as amended by Acts 1989, 71st Legislature, Chapter 875, §1), the WIC program is governed by federal regulations and is 99% federally funded. Funds are made available to the department by a federal grant from the USCA. The federal statute (42 USCA 1786), the federal regulations (7 Code of Federal Regulations Part 246), and the federal grant (Federal-State Special Supplemental Food Program Agreement) authorize the USDA to make the funds available to the

department to administer the WIC program in the State of Texas, provided that the department administers the program in accordance with USDA requirements. The latest changes in USDA requirements are the previously mentioned changes to the WIC Policy and Procedure Manual, the latest of which became effective on July 1, 1992. Therefore, the department is adopting the amendments under federal mandate on July 1, 1992.

The amendment is adopted under the following statutes and regulations which provide the Texas Board of Health with the authority to adopt rules covering the Special Supplemental Food Program for Women, Infants and Children: the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II, as amended by Acts 1989, 71st Legislature, Chapter 875, §1; Texas Codes Annotated, Human Services Code, Chapter 33; the Health and Safety Code, §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; the Child Nutrition Act of 1966, 42 United States Code Annotated 1786; the Commodity Distribution Reforms Act and Amendments of 1987, Public Law 100-237; and 7 Code of Federal Regulations Part 246.

### §31.3. WIC Policy and Procedure Manual.

(a) The Texas Department of Health adopts by reference the publication titled, "WIC Policy and Procedure Manual," which the department developed, as amended in August 1992 [October 1991].

(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 July 30, 1992.

TRD-9210691 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: July 1, 1992

For further information, please call: (512) 458-7444

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty Insurance

##### Subchapter H. Cancellation, Denial, and Nonrenewal of Certain Property and Casualty Insurance Coverage

###### • 28 TAC §5.7016

The State Board of Insurance of the Texas Department of Insurance adopts new §5.7016, prohibiting insurers, under certain

circumstances, from non-renewing an insured's personal automobile policy based on the insured's having incurred accidents or claims which occur outside of the insured's control. The section is adopted with changes to the proposed text as published in the May 12, 1992, issue of the *Texas Register* (17 TexReg 3450). An earlier version of the adopted section was published in the January 28, 1992, issue of the *Texas Register* (17 TexReg 615). Public comments on the earlier version of the section were received by the board and formally considered in a public hearing convened on April 22, 1992, and continued on April 29, 1992. At the public hearing April 22, the department staff presented revisions of the proposed section developed by the Office of Public Insurance Counsel (OPIC) with department staff assistance. The board recessed the April 22 hearing to allow industry representatives an opportunity to review and comment on the revisions to the proposed section. When the hearing reconvened on April 29, industry representatives, OPIC, and the department staff recommended revision of and republication of the proposed section. Following consideration of all comments and recommendations of staff, the board directed that the proposed section be revised as set forth in the alternate version supported by the staff, OPIC, and the industry and be republished for public comment. Following receipt of public comments on the revision of the proposed section which were formally considered in a public hearing held on June 24, 1992, and hearing the recommendations of department staff, the board adopted the proposed section with minor changes as noted in Paragraph 2.

The State Board of Insurance adopted the section to remedy the inequities inherent in nonrenewal of an insured's private automobile policy for prior accidents or claims which were not the result of fault by the insured. The board and the department had received numerous complaints from policyholders whose private auto policies were not renewed because they had made claims for accidents which were not their fault. Many policyholders also complained that they had been unaware that making claims under their private auto policies would subject them to a greater risk of nonrenewal of their policies regardless of the size of their claims or their lack of fault in the accidents giving rise to the claims. The adopted section addresses some of these problems by prohibiting in subsection (a) insurers from non-renewing a private auto policy for four types of claims or accidents which are clearly not-at-fault claims regardless of the number of such claims made by an insured. Subsection (b) of the section also forbids nonrenewal of private auto policies for other accidents in which the insured cannot reasonably be considered to be at fault provided that the insured has no more than two such other non-at-fault accidents in a 12-month period.

The board limited the latter nonrenewal provision in response to industry testimony that two or more other not-at-fault accidents occurring within 12 months may be an indicator of claims fraud. This subsection strikes a fair balance, in the department's opinion, between the potential for abuse by insurers in

non-renewing policyholders for accidents which are not their fault with the potential for abuse by policyholders making fraudulent claims. Finally, to address the problem of policyholders making claims without being aware that their private auto policy may be non-renewed as a consequence, the section requires insurers to give notice of the contents of the adopted section within 60 days of the effective date of the section to their policyholders. Policyholders will be informed of the specific situations in which an insurer can nonrenew a policy for not-at-fault claims or accidents. The board made two minor changes to the section.

The board changed the verb "does" to "do" in subsection (a)(1) so that the verb agrees with the subject.

The board also changed the phrase "the insured" to "an insured" in the first line of subsection (b).

Subsection (a) of the proposed section provides that none of the types of claims or accidents listed in that subsection may be used by an insurer as the sole basis for a refusal to renew a personal automobile policy.

These accidents or claims involve: damage from a weather-related event that does not involve a collision; damage by contact with animals or fowls; damage caused by flying gravel, missiles, or falling objects, provided that upon renewal the insurer may increase the insured's deductible to the higher of \$250 or the next higher available deductible in the event of three losses in any 36-month period; and towing and labor protection, although the insurer may eliminate this coverage in the event of four such claims in any 36-month period.

Subsection (b) of the proposed section provides that an insurer may not use any other claims or accidents in which an insured cannot reasonably be considered to be at fault as the sole basis for nonrenewal of a policy, unless there are two or more such claims or accidents in any 12-month period. Subsection (c) of the proposed section requires that, 60 days after the rule's effective date, an insurer must provide a one-time written notice to the insured of the contents of this section, in a form approved by the State Board of Insurance, upon the issuance of each new policy or with the first renewal after the section's effective date.

Finally, subsection (d) provides that "refusal to renew," as that term is used in the proposed section, means an insurer's refusal to renew a personal automobile policy in the same insurance company which originally issued the policy.

The department received 16 letters of written comment on the adopted section. Eight of the letters commented directly on the section and basically supported the section, with five commenters saying the section should be strengthened in its protection of policyholders, two suggesting clarifying changes to the rule's language and the last suggesting limitations to the types of not-at-fault accidents for which insureds could not be non-renewed. There were five commenters who basically

supported the section but thought it should go further in protecting consumers from the danger of nonrenewal for not-at-fault accidents. There were two commenters who supported the section but suggested revisions to the language of the rule to clarify its intent. The two commenters commented on behalf of the Texas Automobile Insurance Service Office. A single commenter from Richardson supported the section but proposed more limitations on the types of claims for which policyholders could not be non-renewed. Eight of the letters received did not directly comment on the section, but were supportive of the basis for the section, arguing that it is inappropriate for an insurer to non-renew an insured for not-at-fault accidents. In addition, verbal comments were offered at the June 24 hearing by an individual on behalf of the Office of Public Insurance Counsel, who spoke in support of the section, and another individual from Huntsville spoke in support of the section but suggested its protections for the policyholder be strengthened.

**COMMENTS GENERALLY SUPPORTIVE OF THE CONCEPT OF LIMITING NONRENEWAL BECAUSE OF NOT-AT-FAULT CLAIMS.** One commenter stated that insurance companies should only be able to refuse to write or raise rates if the violation is an endangerment to others, i.e., excessive speeding, habitually speeding, running stop lights, stop signs, etc. Another commenter stated that insurance companies are discriminating against policyholders for not-at-fault claims, which is unjustified. Another commenter stated that allowing an insurer to deny renewal because of no-fault claims is adverse selection against the insured. This commenter also stated that once a company declines to renew, other insurers look at the situation as a Red Flag and use it as an excuse to place an insured in a higher risk category. This commenter also stated those that have legitimate losses and file legitimate claims should not be penalized. One commenter questioned why the board and Texas Legislature allow companies to raise premiums for legitimate claims. This commenter also stated that is the purpose of insurance and asked, "Do the companies expect to collect the exorbitant premiums and never have to pay a claim?" Another commenter stated, "As long as we pay our premiums, we should not have to worry about some insurance company cancelling on us." Another commenter stated insurance underwriting decisions should be based on events within the drivers' control and not on bad luck, bad weather, or somebody else's bad driving. Another commenter stated the board is on the right track. The commenter believes insurance companies have so much power they can circumvent the Board's decisions. Once an insurance company gives you a bad name, it's a stigma with other companies. Another commenter stated, "Why don't the agents explain the jeopardy you are placed in if you file a claim? Since we are forced play by the rules, someone ought to at least have the decency to tell us what the rules are."

**RESPONSE:** The department agrees that in many cases insurers have refused to renew policyholders based solely on accidents that were not the policyholder's fault. The pro-

posed rule was developed to prevent those abuses. The department also agrees that policyholders need to know the rules of the game. The department believes this rule takes an initial step in that direction by requiring insurers to inform policyholders of the contents of this rule. Policyholders will be informed of the specific situations in which an insurer can nonrenew a policy for not-at-fault claims or accidents. The department believes, however, that at some point, insurers should be permitted to take into account the policyholder's experience over a given period when determining whether to renew a policy.

#### COMMENTS GENERALLY SUPPORTIVE OF SECTION BUT SEEKING GREATER PROTECTION FOR POLICYHOLDERS:

**COMMENT:** One commenter suggested subsection (b) should allow three or four not-at-fault claims or accidents before an insurer could refuse to renew an insured's policy and questioned how these accidents could be timed or governed. This commenter believed the rule is a good start but stated one no-fault accident is not a fair solution to this problem.

**RESPONSE:** The department recognizes that developing a specific number is difficult and subject to discussion; however, TDI believes the number selected in subsection (b) coupled with the short 12-month timeframe is a good and reasonable approach.

**COMMENT:** One commenter urged the board to adopt the rule. This commenter stated the provision for counting a not-at-fault accident against any driver is unfair.

**RESPONSE:** The department believes the number and magnitude of claims paid under a policy may in some circumstances be proper issues for an insurer to consider when analyzing a risk.

**COMMENT:** One commenter agreed with the principal provisions of the section but stated that the rule does not go far enough. The commenter stated that subsection (b) of the rule should be amended to provide that a company cannot refuse to renew a policy due to an accident caused by uninsured motorists.

**RESPONSE:** The department believes the protections of this rule should extend beyond accidents involving uninsured motorists. If the accident is not the insured's fault, then the insured is protected by this rule, whether the other motorist does or does not have insurance.

**COMMENT:** One commenter stated the rules do not go far enough to really help the automobile consumer. This commenter is disturbed by the fact that after two claims for not-at-fault accidents, the insurance company could refuse to renew.

**RESPONSE:** The department believes the rule seeks to balance the improper assessment of a penalty for a not-at-fault accident with the potential for fraud and misrepresentation, or put another way, to balance the potential for abuse by insurers versus abuse by insureds. The department believes this rule strikes a good and reasonable balance.

**COMMENT:** One commenter stated vandalism and hit and run accidents should be in-

cluded under subsection (a). The commenter stated subsection (b) grants too much discretion to the insurer in determining what is reasonable and that insureds should not be penalized for being in the wrong place at the wrong time.

RESPONSE: The department believes the rule must take into account the potential for fraudulent claims. TDI believes putting vandalism and hit and run accidents in subsection (a) would eliminate any control for this potential. With respect to abuse of discretion regarding what is reasonable, TDI believes it has authority to investigate such actions and initiate appropriate action to address the abuses.

COMMENTS SUPPORTIVE OF THE SECTION BUT SUGGESTING CLARIFYING OR CORRECTIVE CHANGES TO THE TEXT: One commenter suggested revisions to subsection (b) of the section as it had been revised and republished and noted that language appeared to have been inadvertently left out of the draft presented for publication. Another commenter developed and urged adoption of a rewrite of the proposed rule. The rewrite offered to eliminate confusing phraseology and to align singular verbs with singular subjects and plural verbs with plural subjects.

RESPONSE: The department offered the changes to subsections (a) and (b) for the board's consideration. Because of the process by which this rule was developed and the participation of many interested parties, the department staff was reluctant to simply recommend incorporation of the suggested changes by the previously mentioned two commenters. The board determined that the rewrite suggested by the second commenter contained substantive changes and should therefore not replace the published section text. However, the board made one grammatical change in subsection (a) inspired by this commenter's points. That change substituted "do" for "does" in subsection (a)(i) to align the verb with the subject of the subsection. The board decided that one of the two corrective changes suggested by the first commenter was non-substantive and grammatically less desirable but adopted the second proposed corrective change in subsection (b), by changing the reference to "the insured" to "an insured."

COMMENT SUPPORTIVE OF THE SECTION BUT SUGGESTING LIMITATIONS ON THE TYPES OF NOT-AT-FAULT CLAIMS FOR WHICH AN INSURER COULD REFUSE TO RENEW A POLICY: One commenter believes the proposal is too open-ended as to time frame and number of occurrences. This commenter proposed limits to subsection (a)(1), (2) and (3) of three claims in a 24-month period. This commenter also proposed singling out auto theft with a limit of two such claims in any 36-month period.

RESPONSE: The department believes the items listed in subsection (a) are clearly not-at-fault and no limitation is necessary. With respect to the dangers of fraudulent not-at-fault claims involving auto theft, the department believes subsection (b) strikes a balance between the potential for abuse by the insurer and by the insured by fairly ensuring

protection to policyholders but also limiting the potential for consumer fraud that may occur in these claims.

VERBAL COMMENTS MADE AT June 24, 1992 HEARING ON SECTION:

COMMENTS FROM INDIVIDUAL OF OPIC: OPIC supports the section. OPIC worked hard on this section to reach a compromise with the industry and is happy it was able to reach that compromise. OPIC does not oppose two corrective changes proposed by an individual of Austin because that was language agreed to in compromise discussions with the industry. OPIC does oppose the changes to the text proposed by by an individual on behalf of the Texas Automobile Insurance Service Office because the individual had the opportunity to participate in the compromise negotiations and did not attend and because the changes are substantive in OPIC's opinion. However, OPIC supports the minor word changes suggested by the board in response to the individuals' comments.

RESPONSE: The Board accepted Mr. Powers' comments.

COMMENTS FROM AN INDIVIDUAL OF HUNTSVILLE: The individual stated that he grudgingly supports the section because he thinks it is still too weak and ought to be strengthened to protect policyholders from the fickle underwriting practices of insurers. He believes that insurers should be limited in their ability to cancel or non-renew a policy for one ticket or one accident, your fault or not. He thinks that if insurers want to cancel or non-renew policyholders who leave their cars out in hailstorms, they ought to give discounts to policyholders who have garages or carports to protect their cars. He contrasted the treatment of Texas drivers to that of California drivers, citing the example of a relative of his in California who had made a number of claims from not-at-fault accidents and was not cancelled and did not experience a rate increase. He argued that the board should put the brakes on rate increases by insurers

RESPONSE: The department notes that the section as adopted does limit insurers' ability to refuse to renew a personal auto policy for four types of not-at-fault claims, regardless of the number of such claims. The section also limits insurers' ability to refuse to renew for other types of not-at-fault claims unless an insured has more than two such claims in a 12-month period. The department thinks the latter limitation is necessary to strike a balance between the potential for abuse by insurers in non-renewing policyholders for claims outside their control and the potential for abuse by insureds in filing fraudulent claims. The department notes that the individual's other comments touch on subjects not addressed by this section, such as ratemaking and regulation of underwriting generally, and thus makes no response to those comments in connection with this section.

The new section is adopted under the Texas Insurance Code, Article 21.49-2B, which authorizes the State Board of Insurance to adopt rules relating to nonrenewal of motor vehicle insurance policies; the Insurance

Code, Article 1.04, which provides the board with the authority to determine policy and rules in accordance with the laws of this state; the Insurance Code, Article 5.01, which gives the board sole and exclusive authority to determine and prescribe just, reasonable, and adequate rates and rating plans for motor vehicle insurers; the Insurance Code, Article 5.09, which prohibits any insurer from making or permitting any distinction or discrimination in favor of any insured having a like hazard in the matter of the charge of premium for insurance; and the Insurance Code, Article 5.10, which authorizes the board to make and enforce rules and regulations not inconsistent with the provisions of Subchapter A (Motor Vehicle or Automobile Insurance) of Chapter 5 of the Insurance Code. The new section affects Subchapter E of Chapter 21 of the Insurance Code, including Article 21.49-2B, Chapter 1 of the Insurance Code, including Article 1.04, and Subchapter A of Chapter 5 of the Insurance Code, including Articles 5.01, 5.09 and 5.10, all as heretofore specified and discussed. The new section amends Chapter 5, Property and Casualty Insurance, Subchapter H, Cancellation, Denial and NonRenewal of Certain Property and Casualty Insurance Coverage, by adding a new §5.7016 thereto.

*§5.7016. Prohibition of NonRenewal for Not-at-Fault Accidents or Claims—Personal Auto Policy.*

(a) None of the types of claims or accidents listed in paragraphs (1)-(4) of this subsection may be used by any insurer as the sole basis for a refusal to renew a personal auto policy:

(1) claims involving damage from a weather-related incident that do not involve a collision, such as, but not limited to, hail, flood, tornado, winds or hurricanes;

(2) accidents or claims involving damage by contact with animals or fowls;

(3) accidents or claims involving damages caused by flying gravel, missiles, or falling objects; provided, however, that upon renewal the insurer may increase the deductible to the higher of \$250 or the next higher available deductible increment in the event of three losses in any 36-month period; or

(4) towing and labor protection; however, the insurer may eliminate towing and labor protection in the event of four towing and labor claims in any 36-month period.

(b) Any other claims or accidents in which an insured cannot reasonably be considered to be at fault may not be used by any insurer as the sole basis for a refusal to renew the insured's personal auto policy, unless there are two or more such claims or accidents in any 12-month period.

(c) Beginning 60 days after the effective date of this rule, an insurer must

provide a one-time written notice to the insured of the contents of this rule, in a form that has been approved by the board, upon issuance of each new policy or with the first renewal after the effective date of this rule.

(d) "Refusal to renew" as used in this rule means an insurer's refusal to renew a personal auto policy in the same insurance company which originally issued the policy.

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 August 5, 1992.

TRD-9210665      Linda K. von Quintus-Dorn  
                         Chief Clerk  
                         Texas Department of  
                         Insurance

Effective date: August 26, 1992

Proposal publication date: May 12, 1992

For further information, please call: (512)  
483-8327

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# 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 on Aging

Wednesday, August 12, 1992, 10 a.m. The Board on Aging of the Texas Department on Aging will meet at the Harvey Hotel, Trinity Rooms 1 and 2, 7815 LBJ Freeway, Dallas. According to the complete agenda, the board will call the meeting to order; discuss approval of the minutes of the July 29, 1992 meeting; receive public testimony; executive director's report; financial report, to include action to adopt operating budget for FY 1993; action to adopt resolution for presentation at Texas Department on Aging conference August 12, 1992; action on internal audit activities to include action to renew internal audit contract for FY 1993 and action to adopt internal audit plan for FY 1993; board committee reports to include funding formula and AAA operations committee-action on proposed Ombudsman Program service standards; health committee-action to adopt Texas Association of Area Agencies on Aging (TAA) options for independent living position statement; report on Texas Silver Haired Legislature; report on Texas Silver Haired Legislature Foundation; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 4, 1992, 1:33 p.m.

TRD-9210633

## Texas Department of Agriculture

Friday, August 14, 1992, 2 p.m. The Texas Department of Agriculture will meet at the Golden Community Center, Intersection of F.M. Road 7998 and F.M. Road 779, Golden. According to the complete agenda,

the department will hold a public hearing to take public comment on the addition of Quachita County, Arkansas to the list of regulated areas under the sweet potato weevil quarantine and other amendments to the sweet potato quarantine, §§5.63, 5.65-5.68, as published in the *Texas Register* on July 21, 1992, (17 TexReg 5057).

Contact: David Davis, P.O. Box 12847, Austin, Texas 78711, (512) 463-0709.

Filed: August 4, 1992, 10:08 a.m.

TRD-9210627

## State Bar of Texas

Thursday-Friday, August 13-14, 1992, 10 a.m. and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Rooms 202-203 (both days), Austin. According to the agenda summary, the commission will call the meeting to order; introduce visitors; discuss approval of prior minutes; review statistical reports of pending cases; presentation of State Bar 1992-1993 budget; review commission's compliance of State Bar Act and orders of Supreme Court; discuss General Counsel's budget; discuss grievance committees; discuss duties and budget of commission; discuss pending litigation pursuant to Article 6252-17(e); discuss assignment of special counsel cases; personnel matters; authorization of settlement offers; consider assignment of special of special counsel to pending cases; discuss future meeting date; receive public comment; and adjourn.

Contact: Lori Markham, 400 West 15th Street, Suite 1500, Austin, Texas 78701, (512) 463-1381.

Filed: August 5, 1992, 4:39 p.m.

TRD-9210727

## Texas Commission for the Blind

Friday, August 14, 1992, 9:30 a.m. The Governing Board of the Texas Commission for the Blind will meet at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the board will meet in executive session; hear public comments; discuss approval of the minutes of May 27, 1992; discuss and act on proposal to adopt a sliding scale fee for blind and visually impaired children's program case management; partial per diem reimbursement; discuss agency's ADA transition plan and ADA agency policy; consumer input and customer service, action if necessary; Braille competency among agency staff; budget revision to include increased amount from final federal appropriations; and executive director's report on third-quarter activities. Attendees who need special accommodations should notify the agency as far in advance as possible.

Contact: Jean Wakefield, 4800 North Lamar Boulevard, Austin, Texas 78711, (512) 459-2600.

Filed: August 4, 1992, 4:32 p.m.

TRD-9210660

Friday, August 14, 1992, 9:30 a.m. (Revised agenda). The Governing Board of the Texas Commission for the Blind will meet at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the board will meet in executive session; comments from Richard C. Ladd, Commissioner,



Texas Health and Human Services Commission; hear public comments; discuss approval of minutes for May 27, 1992; discuss and act on proposal to adopt a sliding scale fee for blind and visually impaired children's program case management; partial per diem reimbursement; discuss agency's ADA transition plan and ADA agency policy; discuss consumer input and customer service, and act if necessary; Braille competency among agency staff; budget revision to include increased amount from final federal appropriations; and executive director's report. Attendees who need special accommodations should notify the agency as far in advance as possible.

Contact: Jean Wakefield, 4800 North Lamar Boulevard, Austin, Texas 7871, (512) 459-2600.

Filed: August 5, 1992, 4:23 p.m.

TRD-9210726

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

Friday, August 14, 1992, 1 p.m. The Budget Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas Industries for the Blind and Handicapped, Inc., Suite 302, 300 Highland Mall Boulevard, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduce members and guests; overview of FY 1992 budget and program goals for Texas Industries for the Blind and Handicapped (TIBH); report on work centers' response to ideas about the state use program for FY 1993; overview of FY 1993 budget and proposed program goals for TIBH; meet in executive session pursuant to Article 6252-17, Section 2(e), 2(g), and 2(r), Vernon's Annotated Civil Statutes, to discuss personnel matters; discussion and recommendations regarding FY 1993 budget and proposed program goals and commission rates for TIBH; regarding annual letter of agreement between the Texas Committee and TIBH; and adjourn.

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

Filed: August 4, 1992, 3:14 p.m.

TRD-9210655

### General Land Office

Thursday, August 13, 1992, 3:30 p.m. The Veterans Land Board of the General Land Office will meet at the Stephen F. Austin

Building, Room 831, Austin. According to the agenda summary, the board will discuss approval of the July 22, 1992 minutes; consider proposed issuance of new money not to exceed \$35,000,000 for the Veterans Land Program; adoption of resolution authorizing certain matters in connection therewith; selection of underwriter(s) for the bonds; consider modification of loan rates on housing and home improvement loans; consider resolution to issue commitment to Resolution Trust Corporation; and consideration of settling lawsuit regarding Dennis Hynn Fisher, VLB #465-95021 (Cause Number 91A-495, 173rd Judicial District Court, VLB versus DeFord Properties, et al, Henderson County.

Contact: Mae Vrazel, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5340.

Filed: August 4, 1992, 11:26 a.m.

TRD-9210629

### Governor's Office

Thursday-Friday, August 13-14, 1992, 9:15 a.m. and 9 a.m. respectively. The Governor's Commission for Women of the Governor's Office will meet at 1322 Oakland Street, Denton. According to the agenda summary, the commission will begin with a fifteen minute general session; Dr. Shirley Chater, President, TWU will speak on the Governor's Health Policy Task Force; tour of Blagg-Huey Library and breaks at 5 p.m. for a reception at the University House. On Friday, guest presenters, Dr. Dennis M. Perrotta and Dr. Leonel Vela of the Texas Department of Health; committee reports along with the discussion on new topics and possible action will be presented; and adjourn.

Contact: Cynthia Wise Galvan, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: August 4, 1992, 2:43 p.m.

TRD-9210641

Friday, August 14, 1992, 8:45 a.m. The Governor's Advisory Committee on Immigration and Refugees of the Governor's Office will meet at the Texas Law Center, 1414 Colorado Street, Room 101, Austin. According to the complete agenda, the committee will call the meeting to order; review of the responsibilities of the Advisory Committee; overview of conflict of interest laws; report on the refugee program; report on the anti-discrimination education campaign; presentation and approval of SLLAG spending plan; hear public comments; discuss future meetings; and adjourn.

Contact: Dave Talbot, 201 East 14th Street, Austin, Texas 78701, (512) 463-1788.

Filed: August 5, 1992, 9:50 a.m.

TRD-9210689

### Texas Department of Health

Wednesday, August 12, 1992, 9 a.m. The Sanitarian Advisory Committee of the Texas Department of Health will hold an emergency meeting at the Exchange Building, 8407 Wall Street, Room N-218, Austin. According to the complete agenda, the committee will discuss approval of the minutes of June 14, 1991 meeting; discuss and possibly act on election of secretary; update on Texas Department of Health/Texas Water Commission transfer; budget and activity report; review of pending applications; and hear announcements and comments. The emergency status is necessary due to unforeseeable circumstances.

Contact: David K. Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688.

Filed: August 5, 1992, 9:47 a.m.

TRD-9210687

### Texas Department of Human Services

Wednesday, August 12, 1992, 9:30 a.m. The Hospital Payment Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the committee will make opening comments; deputy commissioner's comments; discuss approval of minutes; reports on disproportionate share survey, disproportionate share update, standard dollar amounts for September 1, 1992; amendments to utilization review; medical policy manual updates; open discussion by members; set next meeting date; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: August 4, 1992, 2:57 p.m.

TRD-9210643

### Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, August 19, 1992, 10 a.m. The Law Enforcement Management Institute of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the TCLEOSE Headquarters, 1033 LaPosada, Austin. According to the complete agenda, the commission will call the



meeting to order; recognize visitors; introduction of newly appointed member; discuss approval of minutes of the May 20, 1992 board of directors meeting; research paper distribution; follow-up evaluation of graduates of the GMI; electronic mailbox and bulletin board; staff activity reports; current statistics; House Committee on Public Safety meeting report; action plan; contracts for fiscal year 1993; books; schedule for fiscal year 1993-modules, executive issues, special issues; discuss 1994-1995 budget; and adjourn.

Contact: Fred Tolar, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: August 5, 1992, 1:06 p.m.

TRD-9210699

### Texas State Board of Examiners of Psychologists

Tuesday, August 11, 1992, 9:30 a.m. The Texas State Board of Examiners of Psychologists will hold an emergency meeting at 9101 Burnet Road, Suite 212, Austin. According to the complete agenda, the Chair and Vice-Chair of the board will meet with their Assistant Attorney General, the Board's Executive Director, and the board's investigative staff person to consider fiscal implications for legal assistance requirements needed for fiscal 1993, 1994 and 1995. The emergency status is necessary to consider legal assistance requirements needed for budget submission for fiscal 1993, 1994 and 1995.

Contact: Patricia S. Tweedy, M.P.A., 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: August 5, 1992, 3:32 p.m.

TRD-9210711

### Public Utility Commission of Texas

Wednesday, August 12, 1992, 9 a.m. The Public Utility Commission of Texas will hold an emergency meeting at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the commission will consider the following dockets: 9983, 10956, 10612, 10381, 10212, 6106, 7205, T-11241, P-10893, and P-10629. The emergency status is necessary due to reasonably unforeseeable circumstances requiring immediate action.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1992, 3:56 p.m.

TRD-9210715

Wednesday, August 12, 1992, 9:05 a.m. The Administrative Division of the Public Utility Commission of Texas will hold an emergency meeting at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the commission will discuss reports; discuss and act on budget and fiscal matters; update on Sunset review process; consumer complaint reports and monitoring; weekly commission/staff meetings; regional public hearings on general issues associated with integrated resource/least cost planning (Project Number 11370); consultant support to TU's next rate case; authorize the AG to sign a memo of agreement relating to Cause Number 471,460, SWB V. MCI, and dealing with dedication of a portion of the WATS rounding refund pool to rural addressing; topics for telecommunications workshops; adjourn for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn. The emergency status is necessary due to reasonably unforeseeable circumstances requiring immediate action.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1992, 3:56 p.m.

TRD-9210716

Tuesday, August 18, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11335-General Counsel's inquiry into Southwestern Bell Telephone Company's classification of Hybrid-PBX Systems.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1992, 3:05 p.m.

TRD-9210646

Monday, September 14, 1992, 9 a.m. (Rescheduled from August 10, 1992, 9 a.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11336-General Counsel's inquiry into the reasonableness of the rates, terms, and conditions of Southwestern Bell Telephone Company's central office-based PBX-type services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1992, 3:05 p.m.

TRD-9210647

Thursday, October 22, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11000-application of Houston Lighting and Power Company to amend CCN for the Dupont Project generating unit.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1992, 3:06 p.m.

TRD-9210649

Monday, October 26, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11000-application of Houston Lighting and Power Company to amend CCN for the Dupont Project generating unit.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1992, 3:06 p.m.

TRD-9210648

Thursday, November 5, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10921-Brazos Electric Power Cooperative, Inc. standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities pursuant to Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1992, 3:56 p.m.

TRD-9210714

Tuesday, December 1, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11177-application of Southwestern Bell Telephone Company to offer common channel signaling/signaling system seven "CCS/SS7" interconnection service as an intrastate access service offering.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1992, 3:56 p.m.

TRD-9210712

**Tuesday, December 8, 1992, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10544-application of Texas Utilities Electric Company for approval of standby rate.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 5, 1992, 3:56 p.m.

TRD-9210713

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**Sam Houston State University**

**Tuesday, September 1, 1992, 11:30 a.m.** The Sam Houston Bicentennial Birthday Celebration State Commission of Sam Houston State University will meet at Sam Houston State University Campus, Austin Hall, 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, July 20, 1992; executive director report; and set next meeting date. This will be a joint meeting for the Sam Houston Bicentennial Birthday Committee and the Sam Houston Bicentennial State Commission Committee.

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

Filed: August 6, 1992, 9:27 a.m.

TRD-9210737

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**Texas Water Commission**

**Wednesday, September 23, 1992, 1 p.m.** The Office of Hearings Examiner of the Texas Water Commission will meet at the Montgomery County New Administration Building, County Commissioners Courtroom, 301 North Thompson, Conroe. According to the agenda summary, the commission will consider an application by Tejas Financial Corporation for Proposed Permit Number 13575-01 to authorize a discharge of treated domestic wastewater effluent via pipe into Lake Conroe in Segment Number 1012 of the San Jacinto River Basin.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 5, 1992, 2:05 p.m.

TRD-9210703

**Wednesday, September 23, 1992, 1 p.m.** The Office of Hearings Examiner of the Texas Water Commission will meet at the Montgomery County New Administration Building, County Commissioners Courtroom, 301 North Thompson, Conroe. According to the agenda summary, the commission will consider an application by Dal-Tile Corporation for an amendment to Permit Number 03058 in order to add Outfall 002 to regulate a discharge of treated wastewater at a volume not to exceed an average flow of 7,000 gallons per day. The permit currently authorizes a discharge of treated wastewater at a volume not to exceed an average flow of 7,000 gallons per day via Outfall 001, which will remain the same. The plant site is approximately three miles north of the City of Conroe, and one mile east of U.S. Highway 75 on the north side of Silver Springs Road in Montgomery County.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 5, 1992, 2:05 p.m.

TRD-9210704

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**Regional Meetings**

**Meetings Filed August 4, 1992**

**The Austin-Travis County Mental Health and Mental Retardation Center Executive Committee** held an emergency meeting at 1430 Collier Street, Board Room, Austin, August 5, 1992, at noon. The emergency status was necessary as items required immediate board action and this was the only time a quorum could meet. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 447-4141. TRD-9210656.

**The Bosque Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, Bank One Building, Valley Mills and Waco Drive, Waco, August 7, 1992, at noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9210640.

**The Brazos Higher Education Authority, Inc.** Board of Directors met at the Brazos Club of Waco, Bank One Building, Valley Mills and Waco Drive, Waco, August 7, 1992, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9210637.

**The Brazos Higher Education Service Corporation** Board of Directors met at the Brazos Club of Waco, Bank One Building, Valley Mills and Waco Drive, Waco, August 7, 1992, at 11:45 a.m. Information may be obtained from Murray Watson, Jr., 2600

Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9210639.

**The Brazos Student Finance Corporation** Board of Directors met at the Brazos Club of Waco, Bank One Building, Valley Mills and Waco Drive, Waco, August 7, 1992, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9210638.

**The Canyon Regional Water Authority** Board met at the Spring Hill Water Supply Corporation Offices, 5501 Highway, 123 Bypass South, Seguin, August 10, 1992, at 7:30 p.m. Information may be obtained from David J. Davenport, P.O. Box 188, Merion, Texas 78124, (512) 420-2323. TRD-9210642.

**The Capital Area Planning Council Executive Committee** will meet at 2520 IH-35 South, Suite 100, Austin, August 12, 1992, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9210630.

**The Concho Valley Council of Governments Executive Committee** will meet at the Horseshoe Bay Inn, Marble Falls, August 12, 1992, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9210659.

**The County Education District Number 14** met at the Pampa Middle School Library, 2401 Charles Street, Pampa, August 10, 1992, at 7 p.m. Information may be obtained from Dawson Orr, 321 West Albert, Pampa, Texas 79065, (806) 669-4700. TRD-9210658.

**The Kendall County Education District** Board of Trustees will meet at 121 South Main Street, Boerne, August 12, 1992, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9210636.

**The Region VIII Education Service Center Joint Committee/Regional Advisory Committee** will meet at the Mt. Pleasant Country Club, 1000 Country Club Drive, Mt. Pleasant, August 12, 1992, at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9210634.

**The San Antonio-Bexar County Metropolitan Planning Organization Steering Committee** met at the Centre Room of San Antonio Convention Center, San Antonio, August 10, 1992, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (512) 227-8651. TRD-9210631.

**The South Franklin Water Supply Corporation** Board of Directors met at the

Office of the South Franklin Water Supply Corporation, Highway 115 South, Mt. Vernon, August 10, 1992, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9210657.

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**Meetings Filed August 5, 1992**

**The Alamo Area Council of Governments Community Affairs** will meet at 118 Broadway, Suite 420, San Antonio, August 11, 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-9210717.

**The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees, Personnel Committee** will meet at 1430 Collier Street, Board Room, Austin, August 18, 1992, at 6 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 440-4031. TRD-9210728.

**The Concho Valley Council of Governments Private Industry Council** will meet at 5014 Knickerbocker Road, San Angelo, August 12, 1992, at 3 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9210718.

**The Dallas Central Appraisal District Board of Directors** will meet at 2949 North Stemmons Freeway, Dallas, August 12, 1992, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9210701.

**The Education Service Center, Region VI Board of Directors** will meet at the Briarcrest Country Club, Bryan, August 13, 1992, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9210684.

**The Education Service Center, Region XIII Board of Directors** met at the ESC, Region XIII, Room 205, 5701 Springdale Road, Austin, August 10, 1992, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9210702.

**The Hays County Appraisal District Board of Directors** met at 632 A East Hopkins, Municipal Building, San Marcos, August 10, 1992, at 3 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9210705.

**The Hays County Appraisal District Board of Directors** met at 632 A East Hopkins, Municipal Building, San Marcos, August 10, 1992, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632

A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9210706.

**The Kendall Appraisal District Appraisal Review Board** will meet at 121 South Main Street, Kendall Appraisal Office, Boerne, August 13, 1992, at 9 a.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9210708.

**The Kendall Appraisal District Board of Directors** will meet at 121 South Main Street, Kendall Appraisal Office, Boerne, August 13, 1992, at 5 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9210681.

**The Permian Basin Regional Planning Commission Board of Directors** will meet at the PBRPC Offices, 2910 La Force Boulevard, Midland, August 12, 1992, at 1:30 p.m. Information may be obtained from Terri Moore, P. O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9210700.

**The Region IX Education Service Center Regional Advisory Committee** will meet at the Region IX Education Service Center, 301 Loop 11, Wichita Falls, August 12, 1992, at 10 a.m. Information may be obtained from Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9210698.

**The Region IX Education Service Center Board of Directors** will meet at the Region IX Education Service Center, 301 Loop 11, Wichita Falls, August 12, 1992, at 12:30 p.m. Information may be obtained from Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9210697.

**The Swisher County Appraisal District Board of Directors** will meet at 130 North Armstrong, Tulia, August 13, 1992, at 8 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9210683.

**The Tax Appraisal District of Bell County Board of Directors** will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, August 19, 1992, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29. TRD-9210682.

**The Trinity River Industrial Development Authority Board of Directors** will meet at 5300 South Collins Street, Tarrant County, Arlington, August 11, 1992, at 11 a.m. Information may be obtained from Ramona A. Winer, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9210688.

**The Uniforce, Alamo Quality Work Force Planning Committee** met at Maggie's Restaurant, 9715 San Pedro Ave-

nue, San Antonio, August 10, 1992, at 8:30 a.m. Information may be obtained from Lonnie Coulter, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 299-2400, ext. 442. TRD-9210710.

**The Wise County Appraisal District Appraisal Review Board** will meet at 206 South State Street, Decatur, August 18, 1992, at 9 a.m. Information may be obtained from LaReesea Pittman, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9210685.

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**Meetings Filed August 6, 1992**

**The Callahan County Appraisal District Board of Directors** met at the Callahan County Appraisal District Office, 130-A West Fourth Street, Baird, August 10, 1992, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9210735.

**The Cass County Appraisal District Board of Directors** met at the Cass County Appraisal District, 502 North Main Street, Linden, August 10, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9210733.

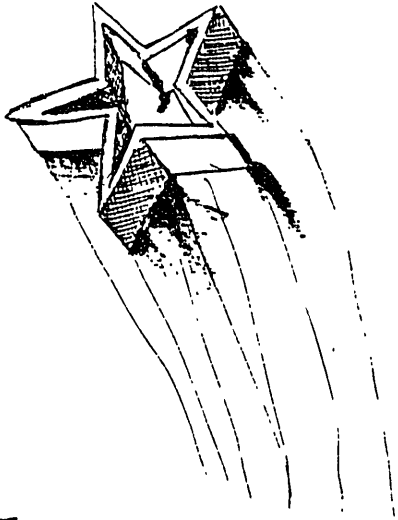
**The Central Appraisal District of Johnson County Appraisal Review Board** will meet at 109 North Main Street, Suite 201, Room 202, Cleburne, August 21, 1992, at 9 a.m. Information may be obtained from Jim Hudspeth, 109 North Main Street, Cleburne, Texas 76031, (817) 645-3986. TRD-9210736.

**The Lampasas County Appraisal District Board of Directors** met at 109 East Fifth Street, Lampasas, August 10, 1992, at 7 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9210734.

**The Texas Council Risk Management Fund Executive Committee** will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Plaza Suite 716, Austin, August 20, 1992, at 7 p.m. Information may be obtained from Spencer McClure, Westpark Building Three, Suite 240, 8140 MoPac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9210739.

**The Texas Council Risk Management Fund** will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Waterloo Room, Austin, August 21, 1992, at 8 a.m. Information may be obtained from Spencer McClure, Westpark Building Three, Suite 240, 8140 MoPac Expressway, Austin, Texas 78759, (512) 794-9268. TRD-9210738.

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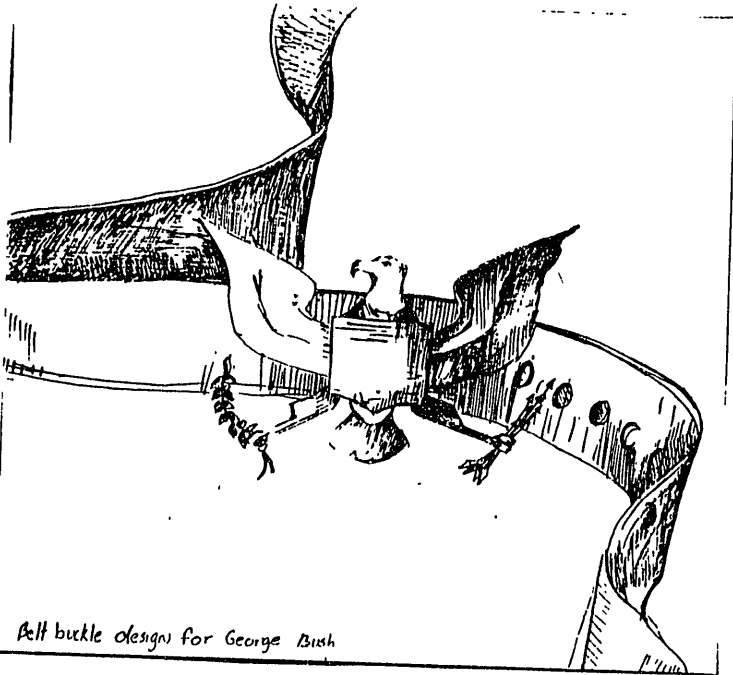
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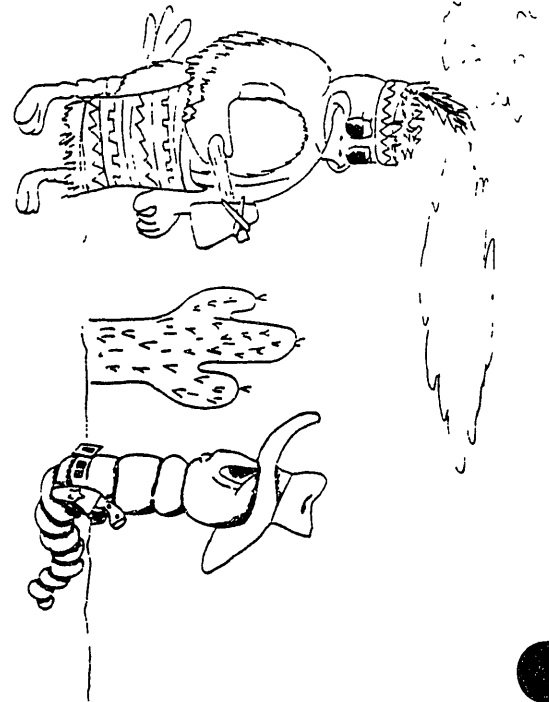
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Belt buckle designs for George Bush

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# 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 301

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider the application of Tufco Ready Mix, Inc. (the Applicant) as to whether the proposed facility meets the criteria as an exempted facility. The application filed by the applicant is for construction and operation of a concrete batch plant under TACB Standard Exemption Number 71. The plant will perform wet batching and will emit air contaminants, specifically particulate matter. The plant location is south-east of the intersection of Lone Elm Road and Hoyt Road, about two miles west of Waxahachie, Ellis County, Texas 75165.

**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, August 19, 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. No correspondence should be sent to any member of the Texas Air Control Board at any time regarding this hearing. 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 Thursday, September 3, 1992, at the TACB Central Office, Room 143-E, 12124 Park 35 Circle, Austin, Texas 78753. 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 Tuesday, September 22, 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 qualifications and requirements of TACB

Regulation VI, Rule 116.6 (31 Texas Administrative Code, §116.6), TACB Standard Exemption Number 71 and Texas Health and Safety Code, §382.058. These requirements include compliance with the Texas Clean Air Act and all applicable TACB and federal regulations.

**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 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 communication or other accommodation needs who are planning to attend the meeting should contact the agency at (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 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753 and at the Waxahachie City Hall Office located at 401 South Rogers, Waxahachie, Texas 75165.

**Legal Authority.** This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.0291, 382.030, 382.031, 382.057, and 382.058 and TACB Procedural Rules, §103.31 and §§103.41-103.66.

Issued in Austin, Texas on August 3, 1992.

TRD-9210679 William R. Campbell  
Executive Director  
Texas Air Control Board

Filed: August 5, 1992

## Texas Department of Banking Notice of Hearing

The Texas Department of Banking will hold a public hearing on August 18, 1992, beginning at 9 a.m. and continuing until conclusion at the Texas Department of Banking Hearing Room, Third Floor, 2601 North Lamar Boulevard, Austin, Texas 78705, for the consideration of proposed Guaranty Fund Rules, 7 Texas Administrative Code, §25.18, entitled "Definitions Applicable to §25.19 and §25.20," 7 Texas Administrative Code, §25.19, entitled "Seizure," and 7 Texas Administrative Code, §25.20, entitled "Guaranty Fund Claims Filing Procedures and Eligibility for Payment Standards." The proposed rules concern maintenance of a fund to guarantee performance

by sellers of prepaid funeral contracts of their obligations to purchasers to prepaid funeral contract.

The proposed rules were published in the *Texas Register* on June 2, 1992, and the 30 day public comment period expired on July 1, 1992.

The hearings officer may ask participants to limit their oral testimony at the hearing depending on the number of people who appear and wish to testify. People who intend to submit written materials to the board are asked to submit such written materials as soon as possible. All such written materials should be submitted to Larry J. Craddock, Hearings Officer, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

Issued in Austin, Texas on August 4, 1992.

TRD-9210632      Ann Graham  
                            General Counsel  
                            Texas Department of Banking

Filed: August 4, 1992

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## Texas Commission for the Blind Request for Proposals

Pat D. Westbrook, executive director of the Texas Commission for the Blind, has announced the availability of Title VII, Part A, funds to contract for independent living skills training for legally and totally blind individuals.

**Funding Areas.** Applications will be considered for facilities eligible under 34 Federal Regulations 365.40 for independent living skills training

**Objectives.** The primary objective of the Independent Living Rehabilitation (ILR) Program is to enable persons with severe vision impairment without vocational potential to live more independently with their families and/or in their communities and to avoid institutionalization. This is achieved by actively seeking individuals who would benefit from Part A services via the provision of independent living skills training, adaptive aids, and assistance in obtaining physical restoration.

**Purpose.** The Texas Commission for the Blind anticipates awarding a grant or grants to a facility or facilities to fund one full-time or two half-time positions to develop referrals and conduct assessments of individuals regarding their needs for various independent living skills under Title VII, Part A, and to provide the recommended independent living skills training programs to consumers determined eligible by the commission. The grant or grants will also provide funds for the purchase of diagnostics necessary to determine eligibility and plan the consumer's program. Total funds available for this purpose will range from \$28,000 to \$30,000. Examples of activities include: referral development, contacting potential referral sources, making presentations in the community regarding services, conducting assessments, reviewing case materials, planning and purchasing diagnostic studies, recommending appropriate independent living goals, recommending independent living services, preparing a draft Individualized Written Rehabilitation Plan, training in leisure skills, training in meal preparation, peer counseling, and other individual or group training which will benefit blind persons, with a wide range of disabilities in terms of independence.

**Targeted Population.** Individuals served under these contracts are persons who are severely visually impaired and who have met the following basic requirements for receiv-

ing independent living rehabilitation services: there is a presence of a severe physical or mental disability, which for the purposes of this contract includes a severe visual impairment; there is a presence of a severe limitation in ability to function independently in the family or the community; there is a reasonable expectation that independent living and rehabilitation services will assist the individual to improve his or her ability to function independently in the family or community.

All consumers served under these contracts must be determined to be eligible and have their Individualized Written Rehabilitation Program approved by the Texas Commission for the Blind caseworker.

**Who is Eligible to apply.** Local public agencies and private nonprofit organizations that provide independent living skills training are eligible to apply for contracts. Section 365.12 of the Federal Regulations states: "Any agency, organization or facility awarded a grant by the state unit must assure that individuals with severe handicaps are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services." Priority consideration will be given to those areas or cities where the commission does not presently have an independent living rehabilitation caseload. Commission caseloads are presently in the following cities: Austin, Beaumont, Corpus Christi, Harlingen, Houston, Odessa, Pasadena, San Antonio, Texarkana, Tyler, Waco, and Wichita Falls.

**Application Procedures.** Submit to Robert Packard, Director of Special Services, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas, 78711, a narrative no longer than five typed pages which describes: your organization; individuals you now serve, the number of blind consumers served in the last fiscal year, the quality and extent of services to be provided, outreach to potential consumers who are blind or visually impaired, adaptive services proposed for consumers who are blind, how proposed services would augment those presently available, and an estimated number of consumers who are blind to be served.

Also include: qualifications of key personnel, including experience related to persons with vision impairments, a budget that includes travel, with reasonable accommodations for staff with mobility impairments, allowances for training in Austin, and anticipated costs for diagnostic studies to establish eligibility, and a letter from the executive director or chairman of the board of your organization supporting your request and your proposed plan.

You may, as an appendix, supply additional information about your organization and past achievements in serving persons who are disabled in general and persons who are blind in particular.

**Method of Payment.** The facility will be reimbursed monthly via a monthly submission of voucher with detail listing of services provided, and after Texas Commission for the Blind review and approval of submitted material.

**Review Criteria.** The following criteria will be used by reviewers in evaluating proposals: The proposal addresses the explicit purpose of the request for proposal and has specific, measurable goals. The applicant provides evidence of their professional and organizational familiarity and expertise with the request for proposal subject matter and their capacity to achieve the objectives of the contract in a timely manner; the facility states that they are free of architectural and communication barriers; the facility

agrees to provide itinerant services to consumers in locations accessible to consumers, including residences if required; the facility's services provide alternatives to institutionalization; the applicant indicates that individuals with severe handicaps are involved in policy and program development decisions; the facility provides evidence of its ability to develop and retain skilled staff, qualified to deliver independent living skills training to consumers.

**Deadline.** All applications must be postmarked no later than September 14, 1992. Interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals to facilitate the request for proposals process. For additional information contact Robert Packard, Director of Special Services, Texas Commission for the Blind, at (512) 459-2588 or (512) 459-2587.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210550 Pat D. Westbrook  
Executive Director  
Texas Commission for the Blind

Filed: August 3, 1992

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**Office of Consumer Credit  
Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Article 1.04, Title 79, Revised Texas Civil Statutes, Articles 1.04, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/10/92-08/16/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

[graphic]

Issued in Austin, Texas, on August 3, 1991.

TRD-9210635 Al Endsley  
Consumer Credit Commissioner

Filed: August 4, 1991

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**Texas Department of Health  
Public Hearing on the Proposed  
Rescheduling of Hydrocodone Drugs,  
Stadol, Nubain and Soma**

The Texas Department of Health will hold a public hearing on the "Proposed Rescheduling of Hydrocodone Drugs, Stadol, Nubain, and Soma," on Monday, August 24, 1992, at 9 a.m. in the Auditorium of the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on August 4, 1992.

TRD-9210651 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: August 4, 1992

**Public Hearing on Proposals for Fiscal  
Year 1993 HIV Health and Social  
Services Projects**

The Texas Department of Health will hold a public hearing on "Proposals for Fiscal Year 1993 HIV Health and Social Services Projects" on Tuesday, August 18, 1992, at 9:00 a.m. at the United Medical Centers, 2310 El Indio Highway, Eagle Pass, Texas 78853. Any questions should be directed to Mary Martinez at (512) 534- 8857.

Issued in Austin, Texas, on August 4, 1992

TRD-9210650 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: August 4, 1992

For further information, please call: (512) 458-7209

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**Texas State Board of Examiners of  
Psychologists**

**Correction of Error**

The Texas State Board of Examiners of Psychologists adopted amendments to 22 TAC §461.15, concerning general rulings, §463.5, concerning application file requirements, and §465.26, concerning temporary permit to practice. The rules were published in the August 4, 1992, *Texas Register* (17 TexReg 5455).

Due to a typesetting error by the *Texas Register*, the agency's heading was omitted. It should have read "Part XXI. Texas State Board of Examiners of Psychologists".

Due to an error in the agency's submission, language was omitted from §465.26(a). It should read "(a) An application for certification or for certification and licensure by reciprocity must be on file with the Board."

In §465.26(f), the word "or" was omitted at the end of paragraph (1). It should read as follows.

"(1) at any time a review...within one year of the temporary permit; or

"(2) if the psychologist is..."

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**Public Utility Commission of Texas**

**Notice of Application to Amend  
Certificate of Convenience and  
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 27, 1992, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§ 16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number:** Application of Magic Valley Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity to construct a transmission line in Hidalgo County, Docket Number 11346 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 11346, Magic Valley Electric Cooperative, Inc. requests approval of its application to construct approximately 7.2 miles of 138kV transmission line.

Persons who wish to intervene in the proceeding or comment upon 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 Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on July 30, 1992.

TRD-9210555      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 3, 1992

◆ ◆ ◆  
**Notice of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for City of Fort Worth in Fort Worth.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for City of Fort Worth. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11366.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for City of Fort Worth. The geographic service market for this specific service is the Fort Worth area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, August 3, 1992.

TRD-9210654      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 4, 1992

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Mercy Regional Medical Center in Laredo.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Mercy Regional Medical Center. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11367.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Mercy Regional Medical Center. The geographic service market for this specific service is the Corpus Christi area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 3, 1992.

TRD-9210653      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 4, 1992

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Shell Oil Company in Houston.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Shell Oil Company. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 11356.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Shell Oil Company. The geographic service market for this specific service is the Houston area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section



at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas on August 3, 1992.

TRD-9210652

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

Filed: August 4, 1992



## Railroad Commission of Texas Correction of Error

The Railroad Commission of Texas adopted the repeal of 16 TAC §§5. 371-5.393. The adoption was published in the July 28, 1992, *Texas Register* (17 TexReg 5285).

Due to a proofreading error by the *Texas Register* the date in the signature block incorrectly says the rule was "Issued in Austin, Texas, on July 21, 1992." The correct date is July 20, 1992.



## Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Ecology Technology, Inc. (SWR 41295) on July 22, 1992, assessing \$17,200 in administrative penalties with \$1,720 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting Mark Alvarado, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on July 24, 1992.

TRD-9210618

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: August 4, 1992



## 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 July 24-July 31, 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.

Bayfield Public Utility District, Gulfway Utility District, City of Houston, Harris County Municipal Utility District Number 67; the Metro Central Plant Wastewater Treatment Facilities; the plant site is approximately 1.6 miles east-northeast of the intersection of FM Road 1959 and Interstate Highway 45, adjacent to the southeast corner boundary of Ellington Air Field in Harris County; renewal; 11851-01.

Berwind Railway Service Company; the wastewater treatment facilities; are located approximately 1,000 feet south of FM Road 1998, approximately 3,500 feet east of the intersection of FM Roads 1998 and 2199 in Harrison County; renewal; 12390-001.

Chemical Waste Management, Inc., Port Arthur Facility; operates a hazardous waste landfill, disposal, and incinerator facility; the plant is south of State Highway 73 and approximately 3.5 miles southwest of State Highway 73-Taylor Bayou Crossing in Jefferson County; amendment; 02417.

Denny's Inc.; the wastewater treatment facilities; are located at 15815 East Texas Freeway (U.S. Highway 59) and approximately 150 feet north of Bender Road in the City of Houston in Harris County; renewal; 11055-001.

Dynagen, Inc.; a synthetic rubber manufacturing plant; the plant site is in the southeast quadrant defined by the intersection of Interstate Highway 20 with Dixie Boulevard, south of the City of Odessa in Ector County; amendment; 00817.

Fort Bend County Municipal Utility District Numbers 47, 48, and 60; the wastewater treatment facilities; are located approximately 800 feet north and 5,000 feet east of the intersection of Trammel Fresno Road and State Highway 6 in Fort Bend County; renewal; 12701-001.

Glenn Hyden; the Glen Oaks Mobile Home Park Wastewater Treatment Facilities; are located approximately 2,000 feet southeast of the intersection of State Highway 30 and FM Road 158 in Brazos County; renewal; 12296-01.

Grayson County Junior College; the wastewater treatment facilities; are located approximately three miles west of U.S. Highway 75 on the north side of FM Road 691, approximately six miles southwest of the City of Denison business district, in Grayson County; renewal; 10689-01.

Guadalupe-Blanco River Authority; the wastewater treatment facilities; are located approximately 800 feet east of the intersection of FM Road 1103 and Interstate 35 in Comal County; renewal; 11751-002.

City of Henderson; the wastewater treatment facilities; are approximately one and 1/4 miles southwest of the intersection of State Highway 79 and FM Road 225 in Rusk County; renewal; 10187-01.

City of Houston; the wastewater treatment facilities; are located at 9600 Martin Luther King Boulevard adjacent to Sims Bayou in Harris County; renewal; 10495-09.

City of Houston; the wastewater treatment facilities; are located on the north bank of Buffalo Bayou at 2525 South Sgt. Macario Garcia in the City of Houston in Harris County; renewal; 10495-90.

City of Houston; the Southwest Wastewater Treatment Facilities; are located at the intersection of Beechnut Street and Newcastle Street, approximately 0.5 mile northeast of the intersection of Interstate Highway 610 and Post Oak Road in Harris County; renewal; 10495-037.

Houston Lighting and Power Company; the Energy Development Complex containing offices, warehouses, maintenance shops, laboratory, and equipment washing facilities; the plant is east of Interstate Highway 45 near the intersection of Fuqua Street with Interstate Highway 45 in the corporate limits of the City of Houston in Harris County; amendment; 01910.

J.M. Slegers doing business as Aspen Dairy; a dairy; the dairy is on the east side of State Highway 67 approximately two miles northeast of the intersection of U.S. Highway 67 and FM Road 913 in Erath County; new; 03468.

Joseph S. Bracewell, Trustee; the Greengate South Wastewater Treatment Plant; the plant site is approximately 8,000 feet southeast of the intersection of Treaschwig Road and Cypresswood Drive, approximately 6.6 miles east-northeast of the intersection of Interstate Highway 45 and FM Road 1960, and 4.2 miles northwest of the intersection of U.S. Highway 59 and FM Road 1960, in Harris County; renewal; 13251-001.

City of Kirbyville; the wastewater treatment facilities; are approximately 3/4 mile east of the intersection of U.S. Highway 96 and Main Street in the City of Kirbyville in Jasper County; amendment; 10202-03.

Liberty-Danville Freshwater Supply District Number 2; the wastewater treatment facilities; are located approximately four miles northeast of the City of Kilgore at a point approximately 5,000 feet east of the intersection of Interstate Highway 20 and U.S. Highway 259, just south of Interstate 20 in Gregg County; renewal; 11833-01.

Lubbock County Water Control and Improvement District Number 1; wastewater treatment facilities; the plant site is on top of the caprock at the southwest corner of the Buffalo Springs Lake Dam in the Village of Buffalo Springs which is approximately five miles east of the City of Lubbock on FM Road 835 in Lubbock County; new; 13602-001.

City of Naples; the wastewater treatment facilities; are approximately 0.5 mile southeast of the intersection State Highway 77 and State Highway 338 in Morris County; amendment; 10230-01.

Play Ball, Inc.; the wastewater treatment facility and sub-surface disposal site; are located on the north side of FM Road 1093 (Westheimer Road), approximately 0.5 mile west of the intersection of Mason Road and Westheimer Road in Fort Bent County; new; 13599-01.

Union Pacific Railroad Company; a railroad yard; the plant site is at the Eureka Yard at the north end of Radcliff Street in the City of Houston, Harris County; renewal; 01197.

Rohm and Haas Bayport, Inc.; a specialty chemicals manufacturing plant; the plant site is at 13300 Bay Area Boulevard in the City of La Porte, Harris County; renewal; 02500.

Sea Lion Chemical, Inc.; a plant that manufactures specialty organic chemicals; the plant site is at 5700 Johnny Palmer Road in the City of Texas City in Galveston County; new; 03479.

Texas Department of Criminal Justice; the wastewater treatment facilities; are located within the boundaries of the Ramsey State Prison Farm on the eastern side of the prison reservation, approximately 0.4 mile south of FM Road 655 and approximately 1.8 miles due west of the intersection of FM Road 655 and State Highway 288 in Brazoria County; renewal; 12300-001.

Texasgulf, Inc.; a sulfur mining facility; the plant is 3.8 miles east of the City of Boling in the City of Newgulf in Wharton County; renewal; 00993.

Texas State Department of Highways and Public Transportation; the wastewater treatment facilities; are located approximately 3,000 feet east of Cow Bayou, on the south side of Interstate Highway 10 between the Cities of Vidor and Orange in Orange County; renewal; 11457-01.

Texas Utilities Electric Company; the Handley Steam Electric Station; at 6604 East Rosedale Street on the northwest shore of Lake Arlington immediately southeast of the IH 820/Rosedale Street interchange in the City of Fort Worth, Tarrant County; renewal; 00552.

City of Thornton; the wastewater treatment facilities; are approximately 0.5 mile south of the intersection of State Highway 14 and FM Road 1246, on the southwest side of the city limits of Thornton in Limestone County; renewal; 10824-01.

Empak, Inc.; a commercial hazardous and non-hazardous industrial solid waste storage and processing facility; the facility consists of 47 storage and processing tanks, three container storage areas, and six filters for processing of mixed wastes and sludges. Wastes managed at this facility are Class I hazardous and Class I and II non-hazardous industrial solid wastes; the hazardous wastes are classified as ignitable toxic, corrosive, acute hazardous toxicity characteristic and reactive; the facility is located on a 4.5 acre tract of land adjacent to State Highway 134 (Battleground Road) approximately 0.8 mile southwest of the San Jacinto Monument in Deer Park, Harris County; new; 45 days; HW50025-001.

GATX Terminals Corporation; a hazardous waste facility to authorize remediation of a closed facility; which was used for the disposal of Class I hazardous and non-hazardous industrial solid wastes; the waste management

units consist of one inactive surface impoundment and one closed surface impoundment. The wastes which were managed at this facility prior to its being closed were hazardous industrial solid wastes including bottom sediment sludge from the treatment of wastewater, stormwater, tank water draws and chemical spill residues from on-site sources. The facility is on a 455-acre tract of land at 906 Clinton Drive in Galena Park; Harris County; new; HW50054-000.

Sandoz Agro, Inc.; revision of incinerator performance standards based on results of the Trial Burn submitted March 15, 1991. The amendment would authorize an increase in the particulate emission rate until December 31, 1992, incorporating language which was provided by the Texas Air Control Board, and; update provisions to reflect current permit language as needed. The permitted hazardous waste management units include four storage tanks and one incinerator. The wastes managed at this facility are Class I hazardous and Class I non-hazardous wastes generated from on-site sources. Wastes authorized to be managed are classified as ignitable and toxic. The facility is located on approximately 210 acres of company-owned land approximately two miles northwest of Jefferson County Airport on the west side of West Port Arthur Road in Jefferson County; amendment; 45 days; HW50219-000.

URI, Inc.; accept waste for disposal from Rhone-Poulenc's Freeport Rare Earth Facility; WDW-250 is used for disposal of wastewater generated at the Rosita Mining Project; proposed amendment would allow URI to dispose of approximately 250,000 gallons of thorium nitrate waste generated and currently stored at Rhone-Poulenc in Freeport; WDW-250 is permitted for injection into the Eocene Yegua Formation; the Rosita Mining Project is approximately 11 miles northwest of San Diego in Duval County; WDW-250 is located approximately 2,217.31 feet from the southeast line and approximately 711.53 feet from the southwest line of the H&GN Survey, A-314 (north latitude 27 degrees 49 feet 45 inches, west longitude 98 degrees 24 feet 17 inches); amendment; WDW-250.

Issued in Austin, Texas, on July 31, 1992

TRD-9210546      Gloria A. Vasquez  
                         Chief Clerk  
                         Texas Water Commission

Filed: August 3, 1992

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**Notice of Application for Municipal  
Solid Waste Permits**

Attached are Notices of Receipt of Applications and Declaration of Administrative Completeness for municipal solid waste permits issued during the period of July 27-31, 1992.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Water Commission. Persons should be advised that these applications are subject to change based on such evaluation.

These notices are issued pursuant to the Texas Health and Safety Code, §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the commission. The commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

BFI Medical Waste Systems, Inc.; Type V Autoclave municipal solid waste facility; approximately 700 feet north of Farm to Market Road 3083 in the Industrial Park and 0.75 mile northwest of the Conroe City Limits, Montgomery County; new; MSW2222.

Browning-Ferris, Inc.; transfer station for special medical wastes; at 4542 S.E. Loop 410 (IH 410), approximately 4500 feet south of the intersection of Loop 410 and Rigsby in Bexar County; new; MSW2211.

Issued in Austin, Texas on July 31, 1992.

TRD-9210549      Gloria A. Vasquez  
                         Chief Clerk  
                         Texas Water Commission

Filed: August 3, 1992

◆            ◆            ◆  
**Notice of Application for Municipal  
Solid Waste Permit Facility**

Attached are Notices of Receipt of Applications and Declaration of Administrative Completeness for municipal solid waste permits issued during the period of July 13-24, 1992.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Water Commission. Persons should be advised that these applications are subject to change based on such evaluation.

These notices are issued pursuant to the Texas Health and Safety Code, §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the commission. The commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

City of Harlingen; Type I municipal solid waste landfill; within the western city limits of Harlingen, 0.8 mile east of the intersection of Loop 499 and FM 106 in Cameron County; new; MSW2131.

Issued in Austin, Texas on July 28, 1992.

TRD-9210548      Gloria A. Vasquez  
                         Chief Clerk  
                         Texas Water Commission

Filed: August 3, 1992

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