

Texas Register

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Texas Register

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Governor-Appointments, executive orders, and proclamations

Attorney General-summaries of requests for opinions, opinions, and open records decisions

Emergency Sections-sections adopted by state agencies on an emergency basis

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 6 (1981) is cited as follows: 6 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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*, sections number, 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 Publications

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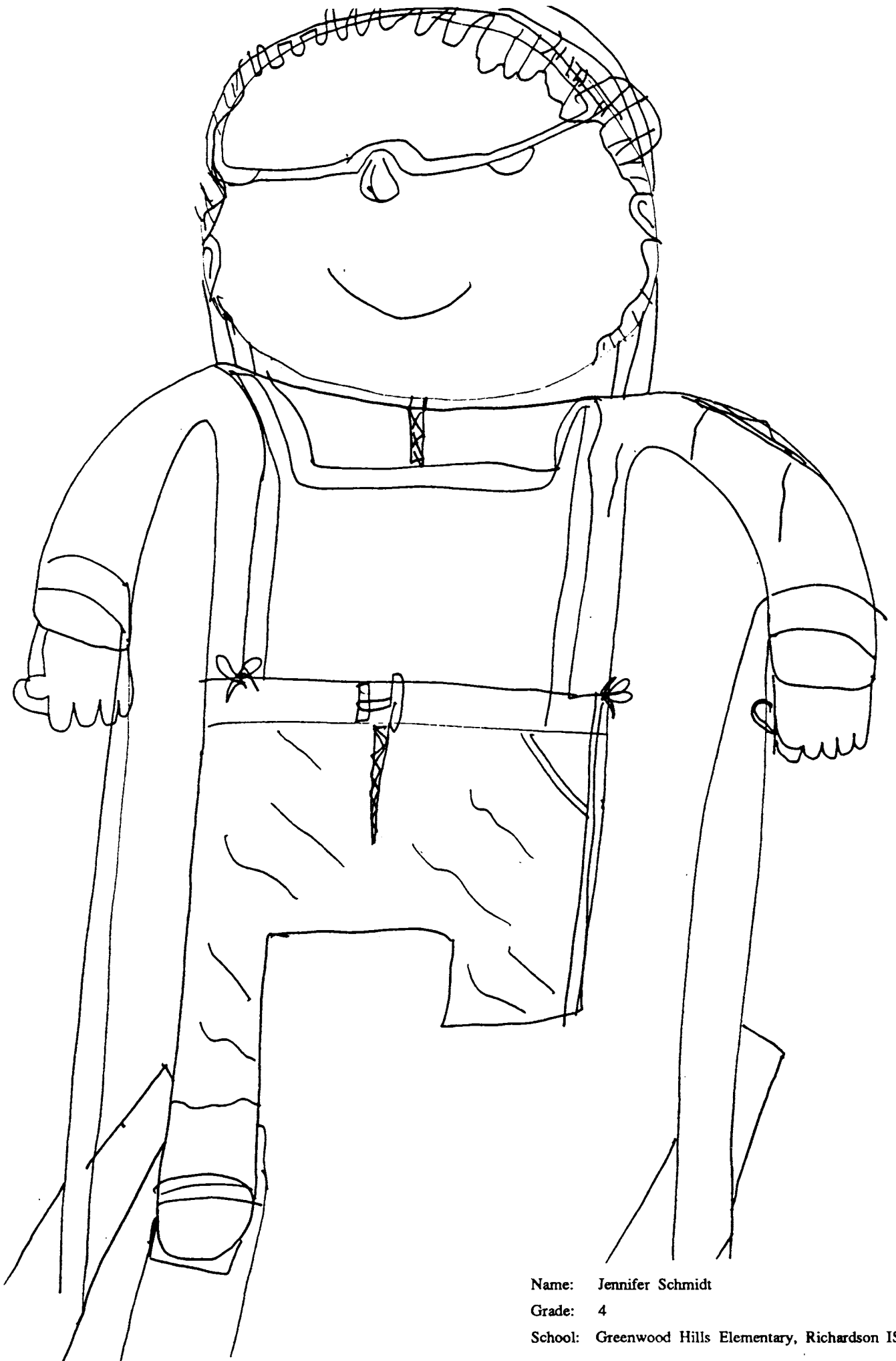
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Name: Elizabeth Delaune

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD



Name: Jennifer Schmidt

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

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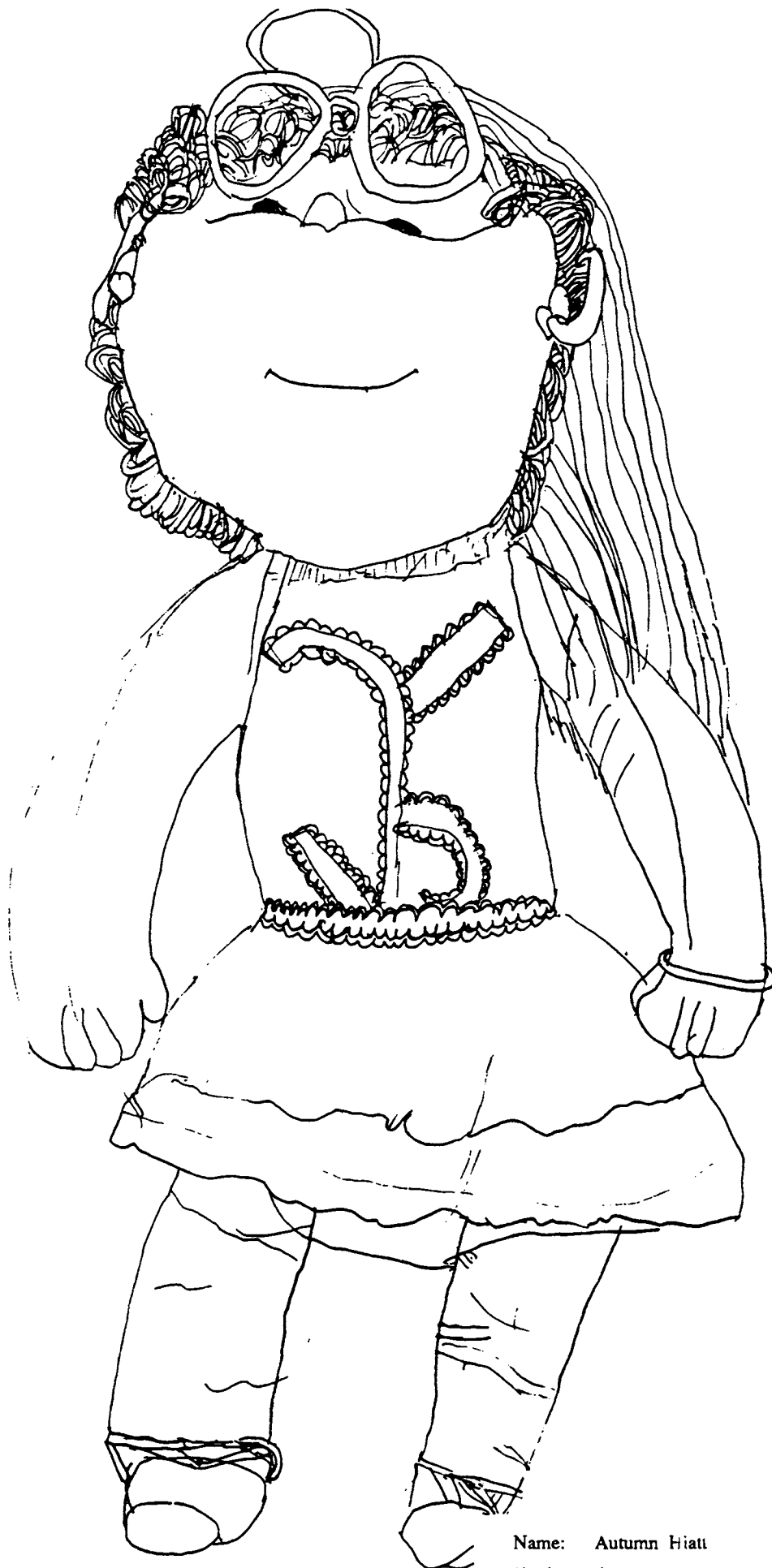
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Name: Autumn Hiatt

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

Attorney General

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

Open Records Decisions

ORD-577 (RQ-2094). Request from Edgar Ruiz, Hidalgo County Judge, Edinburg, concerning confidentiality under the Health and Safety Code, §81.046 of an investigative file of a county health department on outbreak of shigellosis.

Summary of Decision. The Health and Safety Code, §81.046, is a broad confidentiality provision applicable to information relating to reportable diseases in the possession of a county health department, whether received as reports from health professionals or prepared in connection with the department's investigation of a disease or health condition. Section 81.046(c)(2), when read together with Texas Civil Statutes, Article 6252-17a, §3B, the Open Records Act, requires the department release to a requestor any "medical or epidemiological information" it has concerning a individual who has consented to the release.

Open Records Decision Number 422 (1986), which concluded that the predecessor to §81.046 did not apply to reports of investigations performed by a health department, should be disregarded because it construed language that has since been amended.

TRD-9100278

ORD-578 (RQ-2063). Request from Jim A. Robertson, County Judge, Cooke County Courthouse, Gainesville, concerning whether a patient's EMS records are exempted from disclosure as "medical records" under the Medical Practices Act, Article 4495b, §5.08.

Summary of Decision. Emergency medical service reports created under delegated authority from a physician with respect to the transportation of patients are medical records exempted from required public disclosure by §3(a) (1) of the Open Records Act and §5.08(b) of the Medical Practice Act (Texas Civil Statutes, Article 4495b). Open Records Decision Numbers 370 and 258 are overruled to the extent of any conflict herewith.

TRD-9100279

ORD-579 (RQ-2048). Request from James A. Collins, Director, Texas Department of Criminal Justice, Huntsville, concerning

whether an investigation of a sexual harassment complaint is excepted from public disclosure by the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. An investigative file concerning a specific sexual harassment complaint is not excepted from required public disclosures as a public disclosure of private facts, by the informer's privilege, or as information the release of which would unduly interfere with law enforcement. Information actionable under the tort doctrine of false light privacy is not within §3(a)(1) protection of information deemed confidential by law. Open Records Decision Numbers 308, 372, and their progeny are overruled to the extent that they conflict with this decision.

An exchange of information among litigants in "informal" discovery is not a "voluntary" release of information for purposes of §14(a).

TRD-9100280

ORD-580 (RQ-2047). Request from Lawrence F. Alwin, CPA, State Auditor, Office of the State Auditor, Austin, concerning whether information relating to an investigation of a state agency by the state auditor is excepted from disclosure by the Open Records Act, §3(a)(16).

Summary of Decision. The term "audit working papers" in the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(16), is a term of the art connected with the practice of accounting and should be given the significance attached to it by experts in that field. Open Records Decision Number 164 (1977) is overruled.

TRD-9100281

ORD-581 (RQ-2081). Request from Jerome H. Supple, President, Southwest Texas State University, San Marcos, concerning availability under the Open Records Act, Texas Civil Statutes, Article 6252-17a, of source codes and related documentation designed to limit access to computer-stored records.

Summary of Decision. Where information has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, it is not the kind of information made public by the

Open Records Act, §3(a). Accordingly, computer programs used by Southwest Texas State University to maintain records need not be released.

TRD-9100282

ORD-582 (RQ-1932). Request from Kenneth Beasley, Chief Administrative Officer, City of El Paso, concerning whether documents relating to a police department's investigation of a rapid transit department are exempted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. Portions of a police department investigation of a mass transit department which are within the informer's privilege, or which are recommendations to be used in the deliberative process are exempted from required public disclosure.

TRD-9100283

ORD-583 (RQ-2095). Request from Patrick J. Fleming, County Attorney, Parker County Courthouse, Weatherford, concerning whether the names and addresses of purchasers of automobile license plates are exempted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. When a written request for information in vehicle registration records containing the information specified by Article 6675-17A(a) is received, the requested information must be released unless the information is within an exception enumerated in the Open Records Act, §3(a).

TRD-9100284

Opinions

JM-1271 (RQ-2166). Request from William C. Wilson, Major General, TXARNG, Adjutant General's Department, Austin, concerning authority of an employee of the Adjutant General's Department to carry a handgun while in the course and scope of his employment.

Summary of Opinion. A public security officer employed by the Adjutant General's Department may lawfully carry a handgun while performing his official duties on premises under the control of the adjutant gen-

eral, but not while traveling to and from those premises, without the necessity of obtaining a commission from the Board of Private Investigators and Private Security Agencies.

TRD-9100339

◆ ◆ ◆
JM-1272 (RQ-2148). Request from W. N. Kirby, Commissioner of Education, Texas Education Agency, Austin, concerning the meaning of "commercial driver-training school" and "driver-training instructor" under Texas Civil Statutes, Article 4413(29c).

Summary of Opinion. A private, non-profit organization that charges an \$8.00 fee for driver safety instruction, and an instructor therefore, fall within the ambit of "commercial driver-training school" and "driver-training instructor" and thus must comply with the requirement of Texas Civil Statutes, Article 4413(29c), which regulates such operations.

TRD-9100340

◆ ◆ ◆
JM-1273 (RQ-2158). Request from Merrill L. Hartman, Chairman, Court Reporters Certification Board, Austin, concerning whether the Government Code, §52.021(e), applies to a Texas resident and related questions.

Summary of Opinion. The application of the Government Code, §52.021(e), is not limited to out of state applicants for certification as shorthand reporters.

TRD-9100341

◆ ◆ ◆
JM-1274 (RQ-1952). Request from Jimmie McCullough, County and District Attorney, 82nd Judicial District, Franklin, concerning authority of a sheriff to require his employees to submit to random drug testing.

Summary of Opinion. The Texas constitutional guarantee of privacy would be violated by random urine testing of deputy sheriffs and jailers for the presence of drugs where no compelling governmental objective for the testing has been shown.

TRD-9100342

◆ ◆ ◆
JM-1275 (RQ-2058). Request from Terry D. McEachern, District Attorney, Hale County Courthouse, Plainview, concerning authority of a county auditor to prescribe a computerized accounting system for elected county officials.

Summary of Opinion. A county auditor in a county with a population of less than 190,000 may adopt and enforce regulations pursuant to the Local Government Code, §112.001 that incidentally require the use of specific computer programming by county

officers, provided such rules are not inconsistent with law or a regulation adopted by the Comptroller of Public Accounts pursuant to the Local Government Code, §112.003, and do not unreasonably infringe upon the duties of county officers. The county auditor may not dictate what equipment county officers shall use in the conduct of the affairs of their offices.

If voter registration information is maintained on a computer system that serves all county offices, and if the commissioners court intends to contract with a private business entity for any service relating to such computerized information, the contract may not be executed without the prior approval of the Secretary of State pursuant to the Election Code, §18.012.

TRD-9100343

◆ ◆ ◆
JM-1276 (RQ-1792). Request from Charles D. Penick, Criminal District Attorney, Bastrop, concerning authority of road district to borrow money, of county to guarantee its repayment, and related questions.

Summary of Opinion. A county road district bond election is not rendered invalid if the amount to be voted upon is changed after a public hearing. A county road district may borrow money by issuing tax anticipation notes and bond anticipation notes as well as bonds, but it may not do so unless authorized by the electorate in accordance with Article III, §52, of the constitution. It may not borrow money in excess of the amount so authorized.

A county is not responsible for debts incurred by members of the commissioners court action for a county road district. A county may not loan money to a road district, but it may invest sinking fund monies in the bonds of the road district. Nor may a commissioners court, acting for the county, guarantee the note of a road district. A county can borrow money for a period of more than a year by complying with constitutional requirements.

The tax collector and the commissioners court cannot ordinarily levy or collect a tax in a road district in excess of the amount voted by the electorate.

Whether members of a commissioners court may be personally liable for their management of road district affairs cannot be answered in an opinion of the attorney general. A criminal district attorney is under no obligation to represent a road district of his county in civil proceedings. County funds may not be used to pay for the legal representation of members of the commissioners court for actions taken in their capacity as ex-officio directors of a road district; whether road district funds may be spent for such purposes is a question of fact.

The ad valorem basis of taxation in the county road district cannot be changed to a

"benefits" basis if the order of the commissioners court called the election on the issuance of the bonds states that such bonds will be retired through the collection of ad valorem taxes.

TRD-9100344

◆ ◆ ◆
JM-1277 (RQ-2108). Request from Mike Driscoll, Harris County Attorney, Houston, concerning what constitutes a "bond" for purposes of Texas Civil Statutes, Article 179f, which regulates charitable raffles, and related questions.

Summary of Opinion. A bond issued by a surety company authorized to do business in Texas under Insurance Code Article 7.19-1, if executed for the full amount of the money value of the raffle prize, would satisfy the bond requirement of §3(j) of Article 179f, which related to charitable raffles.

The county clerk may not accept a "cash bond" in fulfillment of the bond requirement of subsection (j).

The requirement in subsection (j) that an organization "post" bond is met when an acceptable bond is furnished or delivered to the county clerk.

The county clerk is not required to record an Article 179f bond.

TRD-9100345

◆ ◆ ◆
JM-1278 (RQ-2037). Request from Robert Bernstein, M.D., Commissioner, Texas Department of Health, Austin, concerning registration of installers of on-site sewage disposal systems, and related questions under Chapter 366 of the Health and Safety Code.

Summary of Opinion. A local governmental entity that has been designated an authorized agent for purposes of Chapter 366 of the Health and Safety Code may adopt more stringent standards for on-site sewage disposal systems in its order or resolution pursuant to the Code, §366.032(b). An authorized agent that adopts more stringent standards for on-site sewage disposal systems pursuant to that section may adopt more stringent standards for local registration of installers if those standards are necessary to ensure that local installers will satisfy the agent's more stringent disposal system standards. Thus, authorized agents are authorized by §366.032(b) to require additional fees or training, local licenses or registrations, and the posting of surety bonds if necessary to ensure accomplishment of their more stringent standards for on-site sewage disposal systems. Local standards must not directly conflict with Chapter 366 of the Health and Safety Code.

Furthermore, Chapter 366 of the Health and Safety Code does not preempt local regulations not directly in conflict with its re-

quirements that are adopted by local governmental entities in accordance with other legal authority. Thus, local governmental entities, whether or not they are designated as authorized agents, may adopt more stringent requirements than the state for on-site sewage disposal systems and their installers if they possess the legal authority to do so and is such requirements do not directly conflict with Chapter 366.

Individuals who hold state plumbing licenses in accordance with Texas Civil Statutes, Article 6243-101, must obtain state installer registrations as required by Chapter 366 to construct, install, alter or repair on-site sewage disposal system for compensation in this state.

TRD-9100346



JM-1278 (RQ-2037) Corrected Copy. Request from Robert Bernstein, M. D., Commissioner, Texas Department of Health, Austin, concerning registration of installers of on-site sewage disposal systems, and related questions under Chapter 366 of the Health and Safety Code.

Summary of Opinion. A local governmental entity that has been designated an authorized agent for purposes of Chapter 366 of the Health and Safety Code may adopt more stringent standards for on-site sewage disposal systems in its order or resolution pursuant to the Code, §366.032(b). An authorized agent that adopts more stringent standards for on-site sewage disposal systems pursuant to that section may adopt more stringent standards for local registration of installers if those standards are necessary to ensure that local installers will satisfy the agent's more stringent disposal system standards. Thus, authorized agents

are authorized by §366.032(b) to require additional fees or training, local licenses or registrations, and the posting of surety bonds if necessary to ensure accomplishment of their more stringent standards for on-site sewage disposal systems. Local standards must not directly conflict with Chapter 366 of the Health and Safety Code.

Furthermore, Chapter 366 of the Health and Safety Code does not preempt local regulations not directly in conflict with its requirements that are adopted by local governmental entities in accordance with other legal authority. Thus, local governmental entities, whether or not they are designated as authorized agents, may adopt more stringent requirements than the state for on-site sewage disposal systems and their installers if they possess the legal authority to do so and is such requirements do not directly conflict with Chapter 366.

Individuals who hold state plumbing licenses in accordance with Texas Civil Statutes, Article 6243-101, must obtain state installer registrations as required by Chapter 366 to construct, install, alter or repair on-site sewage disposal system for compensation in this state.

TRD-9100338



JM-1279 (RQ-2133). Request from Dr. James E. Franklin, D.C., President, Texas Board of Chiropractic Examiners, Austin, concerning whether a chiropractor may use the title "chiropractic physician".

Summary of Opinion. The Texas Board of Chiropractic Examiners is authorized to promulgate a rule permitting its licensees to employ the term "chiropractic physician," if the phrase is employed in addition to one of

the terms or phrases that the board's licensees are required to employ by Texas Civil Statutes, 4590e.

TRD-9100347



JM-1280 (RQ-2090). Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning gross receipts assessment for telephone companies under §§78-82 of Texas Civil Statutes, Article 1446c, the Public Utility Regulatory Act.

Summary of Opinion. The assessment imposed by Texas Civil Statutes, Article 1446c, §78 the Public Utility Regulatory Act, reaches all public utilities subject to the jurisdiction of the act. Interexchange carriers are not "ultimate consumers" for purposes of §78, if the local access charges are passed through to their subscribers.

TRD-9100348

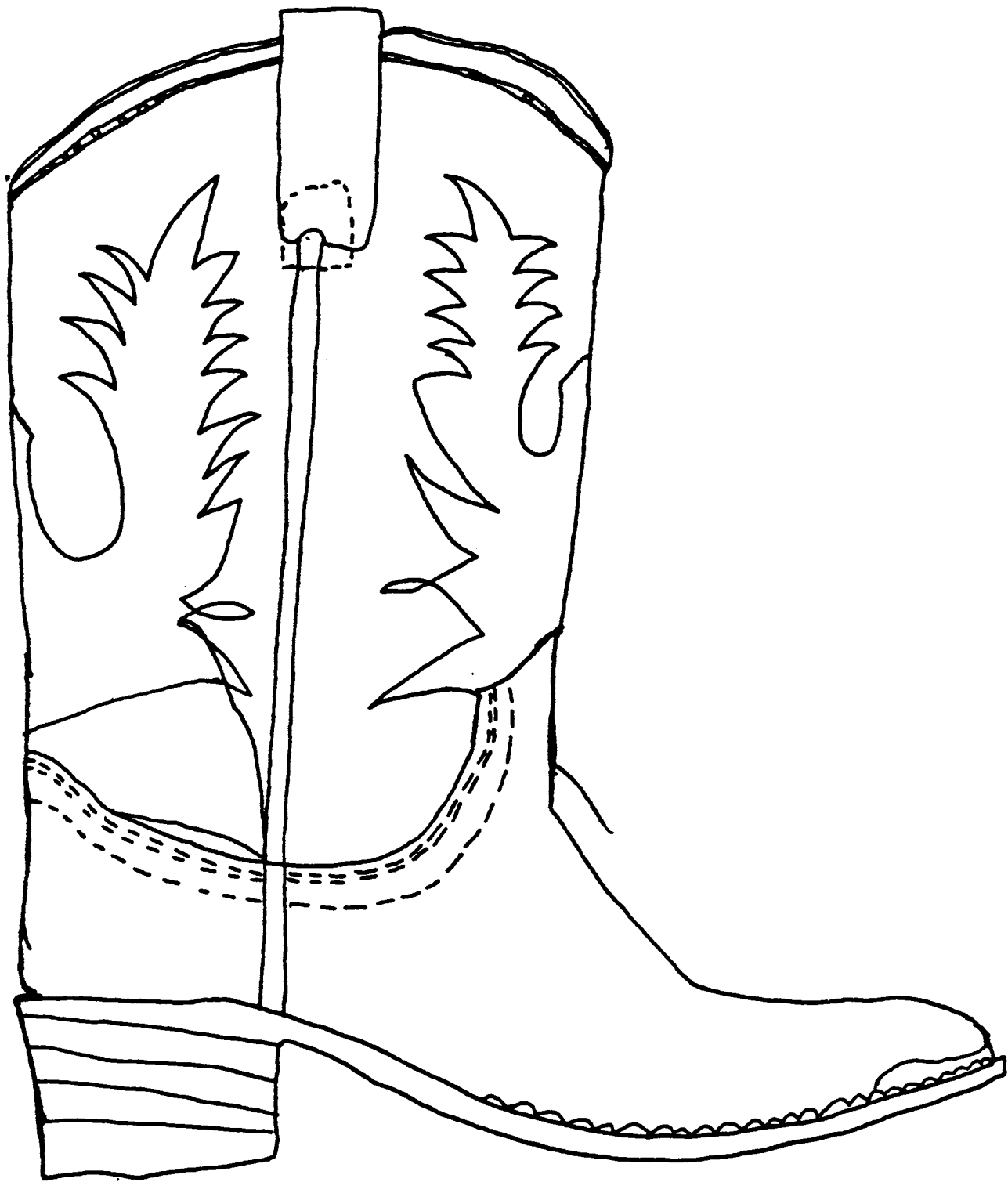


JM-1281 (RQ-1774). Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether a commissioners court may appoint a licensed attorney to advise the sheriff or an individual commissioner.

Summary of Opinion. The Harris County Commissioner Court may not approve the creation of staff positions to be filled by attorneys to be appointed or employed by individual commissioners, or by the sheriff, for the purpose of advising those officers on legal matters without complying with the terms of the Local Government Code, §81.023, which provides that such special counsel be named, and his terms of employment set, by the county attorney.

TRD-9100337





Name: David Smith

Grade: 5

School: Greenwood Hills Elementary, Richardson ISD

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

General Rules

• 16 TAC §23.3

The Public Utility Commission of Texas adopts on an emergency basis an amendment to §23.3, concerning the utility submetering of recreational vehicle parks. The commission finds that the rule is necessary to prevent an adverse effect on the economy of Texas, which constitutes imminent peril to the public welfare.

Incidents of recreational vehicle park owners and managers imposing on recreational vehicle owners extra charges, over and above the cost per kilowatt hour which is charged by the utility to the owner results in unfair rates to the recreational vehicle owners. Additionally, the unjust rates result in an adverse economic impact on seasonal tourists who journey via recreational vehicle to Texas each winter. Unfavorable publicity of these activities serves to deter future trips to Texas and likewise creates an adverse impact to the economy of this state. These conditions arise from the fact that recreational vehicle parks are not within the purview of Public Utility Regulatory Act's (PURA), Texas Civil Statutes, Article 1446(d)(3) submetering rule.

The commission has determined that the detrimental effect of allowing recreational vehicle park owners to charge these additional fees is sufficient enough to require this rule.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

Public utility—The definition of public utility is that definition given in the Public Utility Regulatory Act, Article I, §3(c). However, the metered sale of electricity shall not be considered the provision of electric service for compensation if all of the following conditions are met: the electricity is consumed in a recreational vehicle, as defined in the Texas Commercial Driver's License Act, Article 6687b-2, Texas Civil Statutes, Annotated (Supplement 1991), that is located in a recreational vehicle park; the park owner can show that he does not recover from the recreational vehicle occupants through metered charges more than the utility has charged the park owner including recognition of fuel refunds on an annual basis for the electric service that is being submetered to the recreational vehicle occupants. In order to make such a showing, the park owner must maintain records of the utility bills and the electricity charges collected from the recreational vehicle occupants including consumption records; such electricity is charged by the use of a fixed rate per kwh that is fixed over an annual period and is computed by totaling last year's bills from the utility and dividing by the total kwh consumed during that last year, rounded to the nearest cent. If the supplying utility has had a rate increase since or during the last annual period, the park owner may recompute last year's bills from the utility using the utility's current tariff. If the supplying utility has had a rate decrease since or during the last annual period, the park owner shall recompute last year's bills from the utility using the utility's current tariff. The fixed rate can only be adjusted once annually. If at the end of a year the park owner determines that he has collected an amount different than he has been charged by the utility, the park owner must refund any overcollection and may surcharge any undercollection over the next year. No electric utility bills

or costs for common areas are included in the costs to be recovered through a metered charge from the recreational vehicle occupants.

Issued in Austin, Texas, on January 10, 1991.

TRH-9100318

Mary Ross McDonald
Secretary
Public Utility Commission
of Texas

Effective date: January 10, 1991

Expiration date: May 10, 1991

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

◆ ◆ ◆ Part VIII. Texas Racing Commission

Chapter 305. Licenses for Pari-mutuel Racing

Subchapter B. Individual Li- censes

General Provisions

• 16 TAC §305.35

The Texas Racing Commission adopts on an emergency basis an amendment to §305.35, concerning license fees. The amendment adds a licensing category and a license fee for tooth floaters. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to ensure that all appropriate licensing categories are in place for pari-mutuel horse racing scheduled to begin in March, 1991.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §7.05, which authorize the commission to adopt by rule a fee schedule for licenses issued under the Texas Racing Act.

§305.35. License Fees. The annual fee for an individual license is as follows.

<u>Type of License</u>	<u>Fee</u>
Owner	\$ 50
Kennel Owner	\$ 50
Trainer	\$ 50
Asst. Trainer	\$ 50
Jockey	\$ 50
Apprentice Jockey	\$ 50
Exercise Rider	\$ 20
Groom	\$ 20
Stable Foreman	\$ 20
Veterinarian	\$ 50
Veterinarian Asst.	\$ 20
Jockey Agent	\$ 50
Farrier/Plater/Blacksmith	\$ 40
Tattooer	\$ 40
Cool-out	\$ 20
Pony Person	\$ 20
Valet	\$ 20
Kennel helper	\$ 20
Owner-trainer	\$ 50
Official	\$ 50
Asst. Starter	\$ 20
Association - Other	\$ 50

Admission's person	\$ 20
Entry Clerk	\$ 20
Parking attendant	\$ 20
Maintenance	\$ 20
Leadout	\$ 20
Food Service	\$ 20
Chart-writer	\$ 20
Announcer	\$ 20
Outriders	\$ 20
Security Guard	\$ 20
Test Barn Technician	\$ 20
Mutuel Clerk	\$ 20
Mutuel - Other	\$ 20
Vendor/concessionaire	\$ 50
Vendor/concessionaire employee	\$ 20
Association Officer/Director	\$ 50
Association - Office Staff	\$ 20
Multiple Owner	\$ 20
Authorized Agent (must be licensed as owner or trainer)	\$ 20
Replacement Badge	\$ 10
Stable/Kennel Name	\$ 50
Medical Staff	\$ 20
Association Chaplain	\$ 20
<u>Tooth Floater</u>	<u>\$ 20</u>

16 TexReg 286 January 18, 1991 Texas Register ♦

Issued in Austin, Texas, on January 9, 1991.

TRD-9100358 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

Expiration date: May 11, 1991

For further information, please call: (512)
794-8461

◆ ◆ ◆
**Chapter 319. Veterinary
Practices and Drug Testing**
**Subchapter A. General Provi-
sions**

◆ ◆ ◆
• 16 TAC §319.3

The Texas Racing Commission adopts on an emergency basis an amendment to §319.3, concerning medication restricted. The amendment clarifies the provision relating to the maximum permissible plasma or serum concentration of phenylbutasone in horses. The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to ensure that pari-mutuel horse racing in Texas is conducted with the highest integrity.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §14.03, which authorize the commission to adopt rules prohibiting the illegal influencing of the outcome of a race, including, but not limited to, the use of medication stimulants or depressants to attempt or to influence illegally the outcome of a race.

§319.3. Medication Restricted.

(a) (No change.)

(b) The maximum permissible plasma or serum concentration of phenylbutazone in horses is 5.0 micrograms per milliliter.

(c)-(h) (No change.)

Issued in Austin, Texas, on January 9, 1991.

TRD-9100359 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

Expiration date: May 11, 1991

For further information, please call: (512)
794-8461

◆ ◆ ◆
**Chapter 319. Veterinary
Practices and Drug Testing**
**Subchapter A. General Provi-
sions**

◆ ◆ ◆
• 16 TAC §319.10

The Texas Racing Commission adopts on an emergency basis an amendment to §319.10,

concerning devices and substances prohibited. The amendment clarifies the type of syringe that is permissible at a greyhound racetrack.

The amendment adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis to ensure that pari-mutuel racing is of the highest integrity.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §14.03, which authorize the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

§319.10. Devices and Substances Prohibited.

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

(c) **A person may possess at a greyhound racetrack a syringe with a non-injectable tip.**

(d)[(c)] This section does not apply to an individual who has a valid prescription from a physician for an injectable medication for the individual's own use, provided the individual has notified the stewards or racing judges and has received their approval in writing on a form prescribed by the commission.

(e)[(d)] This section does not apply to a veterinarian licensed by the commission.

Issued in Austin, Texas, on January 9, 1991.

TRD-9100360 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

Expiration date: May 11, 1991

For further information, please call: (512)
794-8461

◆ ◆ ◆
**Chapter 321. Pari-mutuel
Wagering**

**Subchapter A. General Provi-
sions**

Regulation of Wagering

◆ ◆ ◆
• 16 TAC §321.71

The Texas Racing Commission adopts on an emergency basis new §321.71, concerning cap on certain pools. The section authorizes a licensed racetrack to declare an amount as a cap for any pari-mutuel pool that may be carried forward to future performances. The section also clarifies the procedure for distributing money wagered in that pool. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The section is adopted on an emergency basis to ensure that racing with pari-mutuel watering will be conducted with the utmost integrity.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §3.02 and §11.01, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

§321.71. Cap on Certain Pools.

(a) An association may declare an amount as a cap for any pool that may be carried forward to future performances if it is not won. After declaring the amount of the cap for a pool, the association may not change the amount during a race meeting without prior written approval of the executive secretary.

(b) If, at the end of a performance, the amount accumulated in a pool for which a cap has been declared equals or exceeds the amount of the cap, the pool shall be frozen until it is won in accordance with the rules of the commission.

(c) At each performance at which a pool frozen under this section is not won, all money wagered for that pool at that performance shall be distributed to the holders of tickets that contain the most winners.

(d) If at a performance it is not possible to distribute money wagered for a pool frozen under this section in accordance with the terms of the commission rule regarding that pool, all money wagered for that pool at that performance shall be refunded.

Issued in Austin, Texas, on January 9, 1991.

TRD-9100361 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

Expiration date: May 11, 1991

For further information, please call: (512)
794-8461

◆ ◆ ◆
TITLE 28. INSURANCE
**Part I. State Board of
Insurance**

**Chapter 5. Property and
Casualty Insurance**

**Subchapter G. Workers' Com-
pensation Insurance**

**Sale of Alternatives to Work-
ers' Compensation Insurance**

◆ ◆ ◆
• 28 TAC §5.6302

The State Board of Insurance adopts on an emergency basis new §5.6302, concerning alternatives to workers' compensation insurance. The new section is necessary to conform the requirements of the board's rules to legislative enactments concerning workers' compensation insurance, which are effective January 1, 1991. New §5.6302 is to replace

existing §5.6301, concerning sale of alternatives to workers' compensation insurance. Notification of the propose repeal of §5.6301 appears elsewhere in this issue of the *Texas Register*. An imminent threat to the public welfare requires adoption of the new section on an emergency basis in order that all applicable policies of insurance written after January 1, 1991, will contain the disclaimer language provided in new §5.6302. The new section provides that no person, agent, or entity may represent any policy of insurance as an alternative to, or substitute for, a policy of workers' compensation insurance, nor may any person induce a subscriber to the workers' compensation system to become a non-subscriber in order to sell an insurance policy providing benefits to the employer's employees. Section 5.6302 further requires all policies of insurance which provide benefits to employees to include on the face of the policy a notice indicating that the policy is not a policy of workers' compensation insurance and that the employer does not become a subscriber to the system by purchasing the policy. It also requires a similar disclaimer to appear on certificates issued to the policyholder's employees.

The new section is adopted on an emergency basis under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine policy and rules in accordance with the laws of this state; and under Texas Civil Statutes, Article 8308, §3.42, which allow an employer who is not required to have workers' compensation insurance to obtain insurance coverage on employees so long as the insurance is not represented as providing workers' compensation coverage as authorized by workers' compensation statutes.

§5.6302. Sale of Alternatives to Workers' Compensation Insurance.

(a) No person, agent, or entity may represent any policy of insurance as an alternative to or substitute for a policy of workers' compensation insurance, nor may any person, agent, or entity induce a subscriber to the workers' compensation system to withdraw from that system and become a nonsubscriber in order to sell such employer an insurance policy providing benefits to the employer's employees.

(b) All policies of insurance which provide benefits to employees and which are marketed to employers that have elected, or may in the future elect, to be non-subscribers to the workers' compensation system shall include the following statement in 10-point bold-face type on the first page of the policy and on the first page of all materials used in advertising, marketing, and explaining the policy: "THIS IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. THE EMPLOYER DOES NOT BECOME A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM BY PURCHASING THIS POLICY, AND IF THE EMPLOYER IS A NON-SUBSCRIBER, THE EMPLOYER

LOSES CERTAIN COMMON-LAW DEFENSES TO SUIT AS WELL AS CERTAIN LIMITATIONS ON LIABILITY THAT WOULD OTHERWISE BE AVAILABLE UNDER THE WORKERS' COMPENSATION LAWS. THE EMPLOYER MUST COMPLY WITH THE WORKERS' COMPENSATION LAW AS IT PERTAINS TO NON-SUBSCRIBERS AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED."

(c) The same policies of insurance described in subsection (b) of this section shall include the following statement in 10-point bold-face type on the certificate of coverage issued to employees: "THE INSURANCE POLICY UNDER WHICH THIS CERTIFICATE IS ISSUED IS NOT A POLICY OF WORKERS' COMPENSATION INSURANCE. YOU SHOULD CONSULT YOUR EMPLOYER TO DETERMINE WHETHER YOUR EMPLOYER IS A SUBSCRIBER TO THE WORKERS' COMPENSATION SYSTEM."

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

Issued in Austin, Texas, on January 12, 1991.

TRD-9100385 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 11, 1991

Expiration date: May 11, 1991

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

◆ ◆ ◆
Chapter 27. State Fire Marshal
Subchapter D. Storage and Sale of Fireworks

• **28 TAC §27.414**

The State Board of Insurance adopts on an emergency basis an amendment to §27.414, concerning license fees for firms and individuals engaged in the sale, distribution, and use of certain fireworks. The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for the licensing program. An imminent peril to the public safety and welfare requires the adoption of the amendment on an emergency basis in order to ensure that lives and property are preserved during the period of time necessary to adopt the amendment on a permanent basis. The amendment increases initial and renewal fees for all types of licenses and permits.

The amendment is adopted on an emergency basis under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine policy and rules in accord-

ance with the laws of this state, and under the Insurance Code, Article 5.43-4, §5 and §16, which authorizes the board to adopt rules necessary for the protection, safety, and preservation of life and property in controlling the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting, fireworks in this state.

§27.414. Fees.

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

(c) Fees shall be as follows:

(1) manufacturer license:

(A) initial fee **\$1,000** [\$550];

(B) renewal fee (prior to expiration) **\$1,000** [\$550];

(2) distributor license:

(A) initial fee **\$1,500** [\$850];

(B) renewal fee (prior to expiration) **\$1,500** [\$850];

(3) jobber license:

(A) initial fee **\$1,000** [\$550];

(B) renewal fee (prior to expiration) **\$1,000** [\$550];

(4) importer license:

(A) initial fee **\$200** [\$150];

(B) renewal fee (prior to expiration) **\$200** [\$150];

(5) pyrotechnic operator license:

(A) initial fee **\$25** [\$15];

(B) renewal fee (prior to expiration) **\$25** [\$10];

(6) public display license:

(A) initial fee **\$400** [\$200];

(B) renewal fee (prior to expiration) **\$400** [\$200];

(7) retail permit **\$20** [\$10];

(8) Class B public display permit **\$50** [\$25];

(9) (No change.)

(d)-(e) (No change.)

(f) Late fees are as follows:

Expired 1 day to 90 days

	1 Renewal Fee +	Late Fee (1/2 Initial Fee)	=	Total Fee
Manufacturer	<u>\$1,000</u> [\$550.00]	<u>\$500.00</u> [\$275.00]		<u>\$1,500.00</u> [\$ 825.00]
Distributor	<u>1,500</u> [850.00]	<u>750.00</u> [425.00]		<u>2,250.00</u> [1,275.00]
Jobber	<u>1,000</u> [550.00]	<u>500.00</u> [275.00]		<u>1,500.00</u> [825.00]
Importer	<u>200</u> [150.00]	<u>100.00</u> [75.00]		<u>300.00</u> [225.00]
Pyrotechnic Operator	<u>25</u> [10.00]	<u>12.50</u> [7.50]		<u>37.50</u> [17.50]
Public Display License	<u>400</u> [200.00]	<u>200.00</u> [100.00]		<u>600.00</u> [300.00]

Expired 91 days to 2 years

	1 Renewal Fee +	(Late Fee)	=	Total Fee
Manufacturer	<u>\$1,000</u> [\$550.00]	<u>\$1,000.00</u> [\$550.00]		<u>\$2,000.00</u> [\$1,100.00]
Distributor	<u>1,500</u> [850.00]	<u>1,500.00</u> [850.00]		<u>3,000.00</u> [1,700.00]
Jobber	<u>1,000</u> [550.00]	<u>1,000.00</u> [550.00]		<u>2,000.00</u> [1,100.00]
Importer	<u>200</u> [150.00]	<u>200.00</u> [150.00]		<u>400.00</u> [300.00]
Pyrotechnic Operator	<u>25</u> [10.00]	<u>25.00</u> [15.00]		<u>50.00</u> [25.00]
Public Display License	<u>400</u> [200.00]	<u>400.00</u> [200.00]		<u>800.00</u> [400.00]

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

Issued in Austin, Texas, on January 11, 1991.

TRD-9100386

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 11, 1991

Expiration date: May 11, 1991

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

Subchapter K. Petroleum Substance Waste

• 31 TAC §334.481, §334.482

The Texas Water Commission (TWC) adopts on an emergency basis new §334.481 and §334.482, concerning petroleum substance waste.

The TWC finds that an urgent need exists to adopt the new sections on an emergency basis as treatment and disposal of petroleum substance wastes resulting from underground and aboveground storage tank releases is

currently taking place. However, to date there have not been any regulations promulgated by TWC addressing what treatment and disposal standards TWC deems acceptable.

The new sections are adopted on an emergency basis under the Texas Water Code, §26.341-26.359, as enacted in Senate Bill 779, 70th Legislature, 1987, and amended in House Bill 1588, 71st Legislature, 1989, which provides TWC with the authority to establish a program to regulate underground storage tanks and aboveground storage tanks, and under §5.103 and §5.105, which provides TWC with the authority to adopt any rules necessary to carry out its powers and duties.

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

Hazardous waste—Any solid waste identified or listed as a hazardous waste by

the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §6901 et seq., as amended.

Petroleum substance—As defined in §334.2 of this title (relating to Definitions).

Petroleum substance waste—Any waste, excluding hazardous waste, which is generated as a result of a release of a petroleum substance from an underground storage tank or aboveground storage tank regulated by the commission pursuant to the Texas Water Code, Chapter 26, Subchapter I.

Release—As defined in §334.2 of this title (relating to Definitions).

Treatment—Methods which are designed to change, by physical, chemical, or

biological means, the levels of contamination of the petroleum substance waste in order to render the petroleum substance waste suitable for reuse or disposal.

§334.482. *Petroleum Substance Waste Treatment and Disposal.* No person shall treat or dispose of any petroleum substance waste resulting from an underground or aboveground storage tank release except as authorized by the executive director or:

(1) as authorized by the Texas Department of Health at a facility permitted by the Texas Department of Health; or

(2) as authorized by the commission at a facility permitted by the commission; or

(3) as authorized by both the Texas Railroad Commission and the com-

mission at a facility permitted by the Texas Railroad Commission; or

(4) in the case of industrial solid waste, as authorized by both the Texas Department of Health and the commission at a facility permitted by the Texas Department of Health.

Issued in Austin, Texas, on January 10, 1991.

TRH-9100270

Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: January 10, 1991

Expiration date: May 10, 1991

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

◆ ◆ ◆

Proposed Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §§28.1-28.13

The Texas Agricultural Finance Authority of the Texas Department of Agriculture proposes new §§28.1-28.13, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFA) Loan Guaranty Program. The new sections provide a general statement of authority and purpose of the program, definitions, general project eligibility requirements, application requirements and procedures for filing of applications, general terms and conditions of the authority's financial commitment, and criteria for approval of a loan guarantee.

Brian Muller, director of financial assistance, has determined that for the first five-year period the proposed sections are in effect, there may be fiscal implications for state or local government as a result of enforcing or administering the section. It is assumed that the revenue generated by the program from loan repayments will be adequate to cover costs of administration of the program. In the event that the revenue generated by the program is not sufficient to cover costs of administration, the effect on state government for the first five-year period the section is in effect will be an estimated additional cost of up to \$83,900 per year. There will be no fiscal implications for local governments as a result of enforcing or administering the section.

Mr. Muller has also determined that for each year of the first years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the potential to generate up to \$138 million in new agricultural loans over the next 20 years. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposed new sections may be submitted to Richard Waterfield, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §58.023, which provides the Board of Directors of the Texas Agricultural Finance Authority to adopt rules

to establish criteria for eligibility of applicants, criteria for lenders; and §58.022 which provides the board with the authority to adopt rules and procedures for administration of the Texas Agricultural Finance Authority Loan Guaranty Program.

§28.1. Authority. Through action of the Texas Legislature and the approval of the Texas voters in the passage of Constitutional Amendment 3 on November 7, 1989, the Texas Agricultural Finance Authority is authorized to issue general obligation bonds and revenue bonds to provide financial assistance to eligible agricultural businesses through a direct loan, a loan to lenders, a loan insurance or a loan guaranty program.

§28.2. Purpose. The purpose of the Texas Agricultural Finance Authority Loan Guaranty Program is to provide financial assistance to eligible agricultural businesses that otherwise would not be made and that the board of the authority considers to present a reasonable risk and have a sufficient likelihood of repayment. The authority is mandated to support the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products. These rules establish standards of eligibility and the application procedures for a loan guaranty program.

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

Act—The Texas Agricultural Finance Authority Act, Texas Government Code, Chapter 58.

Agricultural business—A business that is or proposes to be engaged in producing, processing, marketing or exporting an agricultural product.

Agricultural product—An agricultural product is an agricultural, horticultural, viticultural, or vegetable product, bees, honey, fish or other seafood, planting seed, livestock, a livestock product, a forestry product, or a poultry product, either in its natural or processed state, or any other agricultural product approved by the authority, that has been produced, processed, or otherwise had value added to it in this state.

Applicant—Any person, corporation, partnership, or sole proprietorship filing an application with the authority for a loan

guaranty. A lender may submit an application for any of the above-mentioned parties.

Application—An application, including supporting documentation and schedules as required by the board for participation in this program.

Authority—The Texas Agricultural Finance Authority.

Board—The board of directors of the Texas Agricultural Finance Authority.

Business day—A day on which the department is open for business. The term shall not include Saturday, Sunday, or a traditional holiday officially observed by the state. The department's normal business hours are 8 a. m. to 5 p.m. each business day.

Credit review committee—The committee, chaired by the commissioner of the Texas Department of Agriculture or his designee.

Department—The Texas Department of Agriculture.

Equity—The applicant's contribution to a project in the form of cash, land, or other depreciable property.

Fund—The Texas Agricultural Fund.

Interest rate—The interest rate on a guaranteed loan shall be determined by the board and the participating lender on a project-by-project basis.

Loan guaranty amount—With respect to loans made by a lender, a sum measured in terms of United States dollars, that, in the case of default by the borrower, the authority agrees to pay, not to exceed the percentage as stated in the guaranty agreement.

Lender—A lending institution, including a bank, banking association, savings and loan association, trust company, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also includes any other financial institution or governmental agency that customarily provides financing of agricultural loans or mortgages, or any affiliate of such an institution or agency, any non-profit certified development company or any institution that the authority determines is an experienced and sophisticated lender.

Program—The Texas Agricultural Finance Authority Loan Guaranty Program.

Project—An enterprise which would further the expansion, development, or diversification of production, processing, marketing or exporting of Texas agricultural products.

Qualified application—A completed application, including all documents and information required by the authority and submitted by the applicant or lender, on behalf of an applicant, for a project.

Staff—The staff of the Texas Agriculture Finance Authority.

State—The State of Texas.

§28.4. Examination of Records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

§28.5. Written Communication with the Department. Applications and other written communications to the department should be addressed to the attention of the Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

§28.6. Texas Agricultural Fund.

(a) **The fund.** The fund, established in the State Treasury, may consist of general obligation bond proceeds, appropriations or transfers made to the fund, guaranty fees, and any other monies received from the operation of the program and interest paid on money in the fund. The board may provide for the establishment and maintenance of separate accounts within the fund, including loan guaranty program accounts as prescribed by the board.

(b) **Loan guaranty.** The authority may determine, in the application process, that a loan guaranty to a lender would best facilitate the project. Such loan guaranty shall not exceed 90% of the total loan, with such percentage being determined on a case-by-case basis. The term of the loan may be varied in length as determined by an agreement between the authority and the lender. The loan guaranty shall not exceed \$2,000,000 except in instances where the maximum is established by the board, but in no case shall the loan guaranty exceed 90% of the project.

§28.7. Project Eligibility Requirements.

(a) **Projects.** An applicant is eligible to submit an application to the authority if the proposed project meets the following criteria:

(1) the project provides significant benefits for the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products; provided that the board shall give priority to agricultural businesses that include producers of Texas agricultural products in the ownership of the businesses; provided, also, that the board should give preference to the appli-

cants, the majority ownership of which is held by citizens of the United States; provided further, that the board shall give preference to applicants who are Texas residents doing business in the state, and then to applicants who can demonstrate that the financed activities will take place predominantly in the state; provided, finally, that the board will also give preference to those agricultural businesses that demonstrate a significant new technology or market opportunity for Texas producers;

(2) the project will create or retain employment, directly or indirectly, in the agricultural production, processing and distribution systems in Texas;

(3) there is a reasonable level of equity in the applicant, which is determined on a case-by-case basis by the authority and the lender; the applicant must provide at least 10% of the total cost of the project;

(4) the applicant must be a legal entity under the laws of the United States of America;

(5) the applicant has its principal place of business in the state;

(6) the applicant's principal owner or owners provide personal guarantees for the loan satisfactory to the authority;

(7) a lender submits a preliminary letter of commitment to make the loan based on a partial guaranty from the authority; and

(8) the applicant provides evidence satisfactory to the board that financial assistance is not otherwise available.

(b) **Project costs.** The proceeds of the guaranteed loan may be used to finance costs incurred in connection with the production, processing, marketing, or export of Texas agricultural products, including, but not limited to, the costs of:

(1) acquisition of and improvements to land or interest in land;

(2) acquisition, construction, rehabilitation, operation and maintenance of buildings, improvements and structures;

(3) site preparations;

(4) architectural, engineering, legal and related services;

(5) acquisition, installation, rehabilitation, operation and maintenance of machinery, equipment furnishings and facilities;

(6) acquisition, processing or distribution of inventory;

(7) research and development;

(8) financing fees and charges;

(9) interest during acquisition or construction;

(10) necessary reserve fund;

(11) acquisition of licenses, permits and approvals from any governmental entity; and

(12) pre-export and export expenses.

(c) **Ineligible project costs.** Costs which are not eligible include, but are not limited to, refinancing of existing debt, except where the refinancing is necessary to provide for further project expansion and development.

§28.8. Filing Requirements and Consideration of Applications.

(a) **Application forms.** An applicant or lender seeking a loan guaranty from the authority must use the application forms provided by the authority.

(b) **Submission of application.** All applicants are required to obtain a preliminary commitment from a lender before applications will be accepted by the authority for credit review. Authority staff will be available prior to submission of the application to assist applicants in identifying lenders and determining program eligibility.

(c) **Staff review.** The authority's staff reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, authority staff will conduct a credit review, evaluate the technical and market feasibility of the project and examine the benefits of the project for Texas agriculture and economic growth in the state.

(d) **Credit review committee.** The authority's staff will submit a report on each application to the Credit Review Committee, chaired by the commissioner or his designee and consisting of department staff and outside advisors as determined by the commissioner. The Credit Review Committee will recommend approval or disapproval to the commissioner.

(e) **Action by commissioner.** The commissioner is delegated authority by the board to act on behalf of the authority to approve or disapprove each application.

(f) **Notification of approval.** Upon conditional approval of the application, the authority will notify the lender in writing identifying the terms and conditions of the loan guaranty. The lender prepares the written agreements and documents necessary to close the loan guaranty in accordance with the terms and conditions set forth in the notice of conditional approval. The authority will send the lender final notice of guaranty approval after review of the closing documents. The lender disburses the loan according to the terms of the note.

(g) **Denial of application.** If the application is disapproved, the authority will notify the applicant in writing identifying the reasons for denial. The applicant will, in most cases, be given 30 days to cure the reasons for denial.

(h) Reporting to the board. The commissioner shall report to the board at each board meeting the status of loans and current financial commitment of the authority.

(i) Providing false information. An applicant who knowingly provides false information in an application is liable to the state and any lender involved for any expense incurred by the state or lender that would not have been incurred if the applicant had not provided the false information.

§28.9. Contents of Application.

(a) Required information. The application must set forth the information necessary for the determination of eligibility and will include the following as appropriate to the nature of the loan being requested:

(1) applicant's name and address;

(2) names, addresses, resumes, and references of owners, investors, board members, and management of the business;

(3) articles of incorporation and bylaws or other instruments that establish or describe the legal operation or structure of the business;

(4) a business plan which includes the following:

(A) information describing the products or services to be offered; and

(B) how such products or services will help to expand, develop, or diversify Texas agriculture;

(5) letters of commitment from other funding sources;

(6) if available, three years of historical balance sheets, cash flow statements, income statements, and federal tax returns;

(7) a pro forma balance sheet which incorporates the new financing;

(8) pro forma cash flow and income statements for at least three years;

(9) a statement of the interest rate used in the pro forma statements;

(10) a statement of any licensing requirements;

(11) a statement that addresses the effect of the business on the tax base of the area and any other positive and negative effects of the project on the area;

(12) assurance of compliance with local zoning laws and building codes, and that instruction projects, the approximate date construction will commence, completion date, and date by which the project will be fully operational; and

(13) documentation that the preliminary design stage has been completed.

(b) Other matters. The applicant must submit any other information as requested by the authority in order to make a prudent loan decision.

§28.10. General Terms and Conditions of Authority's Financial Commitment.

(a) Permissible use of financial commitment. The authority's financial commitment is to be used to finance the project identified on the application.

(b) Minimum amount of loan guaranty. The authority shall not provide financial assistance to an applicant where the principal amount of the loan or credit is less than \$30,000.

(c) Maximum amount of loan guaranty. The authority shall not provide a loan guaranty to an applicant, including its affiliates, at any one time, that exceeds \$2,000,000. The assistance in the form of a loan guaranty shall not exceed 90% of the total loan.

(d) Extent of participation. The authority may participate in a loan guaranty to the extent necessary and appropriate to facilitate the required financing of a project. The applicant may seek co-participation in financial assistance from other private and governmental sources. In any event, the authority's maximum participation in the credit may not exceed 90% of the project costs or \$2,000,000 and the lender must remain at risk for at least 10% of the principal amount.

(e) Interest. The interest rate on the guaranteed loan (not including guaranty fees) shall be the rate charged by the lender and approved by the authority.

(f) Maturity. The maturity of the loan guaranty approved by the authority must not exceed the useful life of the collateral and may be of a negotiated term between the authority and the lender.

(g) Security. Loans must be secured by collateral of a type, amount and value which, when considered with other criteria, affords reasonable assurance of repayment.

(h) Fees. The board shall adopt a fee schedule which can be used to calculate the loan guaranty fee payable by the applicant to the authority on the date of closing. A non-refundable application fee will be required in the amount of \$100 with the application. If the application is approved, the application fee will be considered as part of the loan guaranty fee.

(i) Closing the loan guaranty. The lender, the borrower, and the commissioner or his designee may attend the verification and signing of the closing documents as prepared by the authority's staff and the lender at the date, time and location as determined by the authority.

(j) Reporting requirements.

(1) The lender shall report in writing to the authority as follows:

(A) notification if the loan is placed on a watch list; and

(B) quarterly monitoring reports indicating loan balance, repayment status, and any credit changes reported to lender as indicated on the prescribed form.

(2) The applicant shall provide annual financial statements and cash flow statements to the lender. Such statements should be audited but, if not, they must be signed by the owner of the project. The lender shall submit these reports to the authority. If necessary the authority may request other reports or documentation reasonably necessary to an assessment of the applicant's compliance with the program.

§28.11. Criteria for Approval of a Loan Guarantee.

(a) Need for financial assistance. The authority shall consider whether the desired project financing appears to be available to the applicant on reasonable terms from other lenders. The authority may direct the applicant to other sources for co-participation in the credit.

(b) Reasonable risks. There must be reasonable assurance, in the judgment of the authority, that the loan can and will be paid back according to its terms. In making this judgment the authority may consider the following:

(1) evidence of the manner, means, and security of payment by the applicant;

(2) projected cash flow earnings of the applicant;

(3) firm commitments from other independent and responsible financial sources for all other funds in excess of the loan guaranty;

(4) collateral and other sources of guaranty or insurance securing the loan;

(5) credit history and financial condition of the applicant;

(6) historical financial statements of owners; and

(7) the ability of the management of the project.

(c) Eligibility of lender. The lender originating a loan must have a continuing ability to evaluate, perform and service the loan; to make the necessary reports as identified in the rules of the program; and to collect the loan, if requested by the authority, upon default. The lender must agree to exercise due diligence in the servicing, maintenance, review, and evaluation of per-

formance without regard to the existence of participation by the authority or any other limitation of risk. The authority reserves the right to refuse to enter into loan guaranty agreements with lenders which, in the judgment of the authority, do not have the capacity or interest to appropriately make and service the loan.

§28.12. Loan Administration. The lender shall service the loan and receive all payments of principal and interest, including assessment of any late charges, if applicable, in accordance with its loan guaranty agreement with the authority, which agreement shall, among other things, obligate the lender to service the loan even after an event of default.

§28.13. Eligible Private Lenders.

(a) Letter of request. Each lender is required to qualify itself for participation in the program by submitting a letter of request, accompanied by its most recent audited financial statements, if available, and the designation of the individual(s) within the lender who will be responsible for working with the authority.

(b) Investigation. As a condition to participation, a lender must agree to make such investigation as it considers necessary to determine the applicant's viability, the economic benefits to be derived, the prospects for repayment, and other facts that it considers necessary to determine whether participation by the applicant is within the purposes of the program.

(c) Lender interest. As a condition to participation, the lender must retain an interest of at least 10% in the principal amount of the loan and agree to administer the loan in accordance with this chapter and in such manner as if there were no limitations as to risks.

(d) Commitment letter. A lender interested in making a loan guaranty under the loan guaranty program must submit an application along with a commitment letter to the authority outlining the terms and conditions of the proposed loan. The letter will show the name of the business, purpose of the loan, amount and use of the funds, proposed closing date, and collateral for the loan guaranty amount that the lender is seeking from the authority.

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 January 11, 1991.

TRD-9100391 Brian Muller
Director of Financial
Services
Texas Department of
Agriculture

Earliest possible date of adoption: February 18, 1991

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

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATION**

**Part II. Public Utility
Commission of Texas**

Chapter 23. Substantive Rules

General Rules

• 16 TAC §23.3

(Editor's Note: The Public Utility Commission of Texas proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Public Utility Commission of Texas proposes an amendment to §23.3, concerning recreational vehicle parks. The proposed amendment is intended to clarify that recreational vehicle parks that submeter electricity are not utilities if they do not make a profit on the electricity. The rule requires the use of a fixed per Kwh charge and reconciliation of any over or under collections on an annual basis. The rule requires the maintenance of certain records in order to verify that a profit is not being made.

Bret J. Slocum, deputy general counsel, has determined that for the first five-year period the section is in effect, there will be a savings for state or local government as a result of enforcing or administering the section.

Mr. Slocum also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more stable business environment for recreational vehicle parks.

There will be a beneficial effect on small businesses as a result of enforcing the section in that a more stable business environment is fostered. There are minimal anticipated economic costs to persons who are required to comply with the proposed section as a result of the required record keeping.

Mr. Slocum 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 impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to Mary Ross McDonald, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 232S, Austin, Texas 78757. Comments should be submitted within 90 days after publication of the proposed section.

The amendment is proposed under §16(a) the Public Utility Regulatory Act (PURA), which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

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 January 11, 1991.

TRD-9100369 Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: April 18, 1991

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

◆ ◆ ◆
**Part VIII. Texas Racing
Commission**

**Chapter 305. Licenses for
Pari-mutuel Racing**

**Subchapter B. Individual Li-
censes**

General Provisions

• 16 TAC §305.35

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §305.35, concerning license fees. The amendment adds a licensing category and license fee for tooth floaters.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. Because it is not possible to determine the number of persons who will apply for a tooth floater's license, the fiscal implications for state government cannot be determined at this time. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the occupational licensing function of the Texas Racing Commission is funded and administered in accordance with state law. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$20.

Comments on the proposal may be submitted before March 1, 1991, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §7.05, which authorizes the commission to adopt by rule a fee schedule for occupational licenses issued under the Texas Racing 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 January 9, 1991.

TRD-9100354

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 794-8461

◆ ◆ ◆
**Chapter 319. Veterinary
Practices and Drug Testing**
**Subchapter A. General Provi-
sions**

◆ ◆ ◆
• 16 TAC §319.3

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §319.3, concerning medication restricted. The amendment clarifies the maximum permissible plasma or serum concentration of phenylbutasone in horses.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the proposed 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. Carter 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 assurance that pari-mutuel horse racing will be conducted with the highest integrity. 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 before March 1, 1991, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 1793, §14.03, which authorize the commission to adopt rules prohibiting the illegal influencing of the outcome of a race, including, but not limited to, the use of medication, stimulants, or depressants to attempt to or to influence illegally the outcome of a race.

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 January 9, 1991.

TRD-9100355

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 794-8461

◆ ◆ ◆
• 16 TAC §319.10

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes an amendment to §319.10, concerning devices and substances prohibited. The amendment clarifies the type of syringes that may be possessed at a greyhound racetrack.

Paula Cochran Carter, general counsel for the Texas Racing Commission, 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. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing is conducted with the highest integrity. 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 before March 1, 1991, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §14.03, which authorize the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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 January 9, 1991.

TRD-9100356

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 794-8461

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**Chapter 321. Pari-mutuel
Wagering**

**Subchapter A. General Provi-
sions**

Regulation of Wagering

◆ ◆ ◆
• 16 TAC §321.71

(Editor's Note: The Texas Racing Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Racing Commission proposes new §321.71, concerning cap on certain pools. The section authorizes a licensed racetrack to declare an amount as a cap for any pari-mutuel pool that may be carried forward to future performances. The section also clarifies the procedure for distributing money wagered in that pool.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the proposed 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. Carter 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 assurance that racing with pari-mutuel wagering will be conducted with the utmost integrity. 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 before March 1, 1991, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02 and §11.01, which authorize the commission to adopt rules for conducting racing involving wagering and for regulating pari-mutuel wagering.

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 January 9, 1991.

TRD-9100357

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 794-8461

◆ ◆ ◆
TITLE 19. EDUCATION
**Part I. Texas Higher
Education Coordinating
Board**

**Chapter 25. Administrative
Council**

**Subchapter B. Administration
of the Texas College and
University Employees Uni-
form Insurance Benefits Pro-
gram**

◆ ◆ ◆
• 19 TAC §25.34

The Texas Higher Education Coordinating Board proposes an amendment to §25.34, concerning administration of the Texas State College and University Employees Uniform Insurance Benefits Program.

The purpose of the amendment is to establish uniform procedures for determining when evidence of insurability may be required and when pre-existing conditions limitations may be applied to former employees who are eligible for retiree insurance; and to establish uniform procedures for determining the insurance status of retirees who return to work.

Kathy Lewis, director, Higher Education Insurance Program, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Lewis 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 to provide greater uniformity and consistency at the institutional level in application of Chapter 25, Rules and Regulations of the Administrative Council, regarding eligibility of former employees to apply for retiree insurance without evidence of insurability and pre-existing conditions. 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 Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.34. Basic Procedural and Administrative Practices.

(a)-(k) (No change.)

(1) The institutions shall apply the following practices and procedures with respect to the notification and enrollment of retirees and dependents of retirees in the uniform group insurance plan established for retired employees.

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

(3) Individuals retiring after September 1, 1979, and their dependent(s) who enroll in the retiree plan within 31 days of the date of termination from the active employee plan shall [will] not be required to provide evidence of insurability; and any pre-existing conditions limitations included in the plan shall [will] not apply [, provided, however, the individual enrolls in the retiree plan during the first premium due date following the date of termination from the active employee plan]. However, pre-existing conditions limitations may be applied to individuals and their dependents who were not enrolled in the active employee plan at the institution where the individual was last employed in a benefits eligible status prior to retirement.

(4) (No change.)

(5) Individuals retiring after September 1, 1979, and their dependent(s) who [do. not] enroll in the retiree plan within 31 days of the date of retirement shall not [may] be required by the institution to provide evidence of insurability prior to enrollment in the retiree plan regardless of the individual's insured status at the institution where he/she was last employed in a benefits eligible status prior to retirement.

(6)-(7) (No change.)

(8) Retirees under both TRS and ORP, who return to work at a public institution of higher education shall retain their previous retiree insurance eligibility unless their employment exceeds TRS regulations allowing employment after retirement without loss of retirement income.

(m)-(n) (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 January 9, 1991.

TRD-9100246

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 483-6192

TITLE 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 80. Practice of Chiropractic

• 22 TAC §80.2

The Texas Board of Chiropractic Examiners proposes new §80.2, concerning the practice of chiropractic and the titles or designations that may be used by a licensed chiropractor in the State of Texas.

Jennie Smetana, 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. Smetana also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public can clearly identify and differentiate a doctor of chiropractic. 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 Jennie Smetana, Executive Director, Texas

Board of Chiropractic Examiners, 8716 MoPac Expressway North, Suite 301, Austin, Texas 78759.

The new section is proposed under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules and regulations as deemed necessary.

§80.2. Titles. A licensee may use any of the following titles:

(1) chiropractor;

(2) doctor of chiropractic;

(3) chiropractic physician;

(4) D.C.;

(5) or any derivative of the above listed terms.

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 January 7, 1991.

TRD-9100273

Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiner

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 343-1895

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 247. Education

• 22 TAC §247.4

The Texas Board of Licensure for Nursing Home Administrators (TBLNHA) proposes an amendment to §247.4, concerning continuing education. The amendment will delete the division of continuing education into categories, and will increase the required number of hours from 24 biennially to 40 hours biennially.

Dr. Karl E. Bishop, 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.

Dr. Bishop 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 to comply with anticipated changes under Omnibus Budget Reconciliation Act 87 and continue training of licensed nursing home administrators thereby enhancing the quality of life of our citizens in skilled nursing facilities. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$100 for the years 1991-1995.

Comments on the proposal may be submitted to Dr. Karl E. Bishop, TBLNHA, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756.

The amendment is proposed under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in the Social Security Act, §1980, the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the board.

§247.4. Continuing Education.

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

[(d) The curriculum categories for continuing education are Texas regulatory changes, management theory, preceptor seminars, administrators-in-training completion, and exempt.]

(d)[(e)] For renewal, all nursing home administrators are required to obtain a minimum of 24 [28] hours of continuing education credit. For renewal on and after June 30, 1992, all nursing home administrators are required to obtain a minimum of 40 hours of continuing education credit. [with at least seven hours in supplemental update, management theory, and problems of resocialization. The additional seven hours may be in any category. After August 31, 1988, nursing home administrators will be required to obtain 24 hours minimum, with six each in Texas regulatory changes and management theory. The additional 12 hours may be in any category.]

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 January 10, 1991.

TRD-9100331

Janet E. McNutt
Administrative Technician
III
Texas Board of Licensure
for Nursing Home
Administrators

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 458-1955



TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter S. Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies

• 28 TAC §3.3040

The State Board of Insurance proposes an amendment to §3.3040, concerning prohibited policy provisions in individual accident and health policies. The amendment is necessary to add new subsection (j), concerning premium refund benefits in individual accident and health policies. The new subsection will allow a premium refund benefit without withdrawal values to be included as a separate benefit in an individual, noncancellable disability income policy.

Rhonda Myron, deputy insurance commissioner for the life group, 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. Myron 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 availability of the premium refund benefit described in the section for noncancellable disability income policies. There will be no effect on small businesses. Because the amendment is permissive rather than mandatory, there will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Rhonda Myron, Deputy Insurance Commissioner for the Life Group, State Board of Insurance, Mail Code 830-0, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine policy and rules in accordance with the laws of this state; under the Insurance Code, Article 3.70-1(D), which authorizes the State Board of Insurance to issue such reasonable rules and regulations as may be necessary to carry out the various provisions of the Insurance Code relating to individual policies of accident and sickness insurance; and under the Insurance Code, Article 3.70-1(E), which authorizes the State Board of Insurance to issue rules and regulations to establish specific standards, including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance in addition to and in accordance with applicable laws of this state.

§3.3040. Prohibited Policy Provisions.

(a)-(i) (No change.)

(j) A noncancellable disability income policy may contain a premium refund benefit which does not provide a withdrawal value if and only if all of the conditions in paragraphs (1)-(8) of this subsection are met. Those conditions are as follows:

(1) the amount of premium being refunded is equal to all or a stated portion of the premiums paid, less claims paid, during a specified time or interval during the premium-paying period for the policy;

(2) a premium refund may be paid at one or more specified times or intervals during the premium-paying period of the policy;

(3) the interval between successive possible payments is no greater than 10 years;

(4) the policy provides for the benefit to be paid automatically upon death of the insured or termination of the policy on account of age or duration;

(5) the policy provides that the insured may discontinue the benefit on any anniversary date with a corresponding reduction of premiums;

(6) an acceptable method of reserving is approved by the board concurrent with the approval of the policy;

(7) the premium to be paid for the benefit is fully disclosed to a prospective insured and is stated separately in the policy specifications page; and

(8) the benefit is not to be marketed or titled as a cash-value or return-of-premium benefit.

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 January 10, 1991.

TRD-9100302

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: February 18, 1991

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



Chapter 5. Property and Casualty Insurance

Subchapter G. Workers' Compensation Insurance

Sale of Alternatives to Workers' Compensation Insurance

• 28 TAC §5.6301

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Insurance or in the Texas Register

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

The State Board of Insurance purposes the repeal of §5.6301, concerning sale of alternatives to workers' compensation insurance. The repeal of this section is necessary because of new statutory provisions concerning alternatives to workers' compensation insurance, which are made effective January 1, 1991 (71st Legislature, 1989, Second Called Session, Senate Bill 1). To implement Senate Bill 1, the board is simultaneously adopting on an emergency basis new §5.6302 of this title (relating to Sale of Alternatives to Workers' Compensation Insurance). Notification of the emergency adoption of new §5.6302 appears elsewhere in this issue of the *Texas Register*.

Nancy Moore, deputy insurance commissioner for workers' compensation insurance, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mrs. Moore also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the regulation of alternatives to workers' compensation insurance as provided by state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Nancy Moore, Deputy Insurance Commissioner for Workers' Compensation Insurance, Mail Code 012-2, State Board of Insurance, P.O. Box 149092, Austin, Texas 78714-9092.

The repeal is proposed under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state.

§5.6301. Sale of Alternatives to Workers' Compensation.

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 January 12, 1991.

TRD-9100384

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: February 18, 1991

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Rules Relating to Financial Programs

Subchapter A. Financial Assistance for Water Supply, Water Quality Enhancement, Flood Control, and Acquisition

The Texas Water Development Board (board) proposes amendments to §§363.1, 363.2, 363.31, 363.32, 363.35, 363.52-363.54, 363.57, 363.58, 363.81, 363.83, 363.84, 363.104-363.106, 363.125, and 363.181. The proposed amendments would enable the board to provide financial assistance for the construction of municipal solid waste facility projects, as authorized under the Water Quality Enhancement Program and would make changes to conform the rules to legislative changes. Proposed amendments to these sections were previously published in the August 10, 1990, issue of the *Texas Register* and a public hearing was held in Austin, Texas on August 17, 1990. Those proposals have been withdrawn and the amendments now proposed establish more explicit guidelines for evaluating the feasibility and credit-worthiness of the facility project.

The proposed amendment to §363.2 would add or modify definitions.

Amendments are proposed to §363.31 and §363.32 to present the board's policy regarding the eligibility of municipal solid waste facility projects. The proposed amendment to §363.35 clarifies the board's policy regarding acquisition of permits and other authorization prior to the release of funds.

Changes are proposed to §363.52(b)(6)(C) to include the description of a proposed municipal solid waste facility in the general application requirements and to §363.52(b)(10) to correct a typographical error. An amendment is proposed to §363.53 to include provision for environmental review of municipal solid waste facilities. Section 363.54(h)(2) is proposed for amendment to include information on garbage collection and tipping fee in the required fiscal data. The proposed amendment to §363.57(a) and (b) requires the submittal of engineering feasibility information and other technical report and summaries, including a site assessment prepared by an independent third party professional. The section additionally allows for the retention of an independent third party professional to advise the board in the evaluation of application materials. The proposed amendment to §363.58(d) and (h) describes additional legal data which must be submitted in support of an application for a municipal solid waste facility project.

The amendment proposed to §363.81 requires submission of engineering design data for a municipal solid waste facility and allows for the retention of an independent

third party professional to assist the board in evaluation of engineering design document. The proposed amendment to §363.83 would require permits and other authorization for municipal solid waste facility projects to be obtained prior to loan closing. An amendment is proposed to §363.84 to require submittal of service contracts and to require insurance coverage or a reserve fund to cover potential liability risks associated with the facility project. The section additionally would require documentation from the applicant which addresses environmental matters, indemnification for the board in the event of environmental claim, and evidence that required permits have been issued prior to closing a loan for a municipal solid waste facility project.

Proposed amendments to §§363.104-363.106 provide requirements for inspection of municipal solid waste facility projects during construction, for alterations to approved plans and specifications, and for inspection of materials and conducting a preopening inspection.

Amendment to §363.181 would require that applicants notify the board of violations, claims or suits relating to the facility project and of the occurrence of any unplanned discharges or releases from the facility project.

The board also proposes amendments to §§363.1, 363.2, 363.31, 363.32, 363.57, 363.83, and 363.125 to clarify and to conform with legislative changes. Section 363.1 and §363.2, in the definitions of "development funds", "water development bonds", "water quality enhancement bonds", and "water quality enhancement funds", would include references to additional bonding authorizations in the Texas Constitution, Article III, §49-d-6 and §49-d-7. The definition of "change order" in §363.2 would be clarified. Amendment to the definition of "project" in §363.2 and to §363.32(a) would eliminate the restriction against providing funds for retail water transportation facilities. This restriction was removed as a result of amendments to the Texas Constitution and the Texas Water Code, §17.001(7). Amendments to the definition of "project" in §363.2 and to §363.32(a) would clarify what conservation projects are eligible for financial assistance, in accordance with amendments to the Texas Water Code, §17.121.

Section 363.31(a) and (b) would be amended to clarify existing language and to eliminate out-dated references to legislative intent. An amendment is proposed to §363.57(a)(5) to require a cost effective analysis of innovative and nonconventional treatment systems as a result of amendments to the Texas Water Code, §17.189. Section 363.83 would be amended by deleting subsection (b) in accordance with amendments to the Texas Water Code, §17.123.

An amendment to §363.125 would modify the requirement for retainage as amended by the Texas Water Code, §17.183.

Susan Taylor, director of accounting, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an additional cost of \$75,000 for 1991 and an additional cost of

\$150,000 for the years 1992-1995. There is no anticipated effect on local government, small businesses, or local economies for the first five-year period.

Ms. Taylor also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the clarification of program requirements and the financial assistance application process for eligible local governments of the state.

Written comments on the proposal may be submitted to C. R. Miertschin, Director of the Engineering Division, P.O. Box 13231, Austin, Texas 78711. Comments will be accepted for 30 days following publication.

Introductory Provisions

• 31 TAC §363.1, §363.2

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.1. Scope of Rules. These sections, adopted pursuant to the Texas Water Code, §6.101, shall govern the board's Water Loan Assistance Program, Water Development Program, Water, Wastewater and Storage Facilities Acquisition Program, Water Quality Enhancement Program, and Flood Control Program as authorized by the constitution of the State of Texas, Article III, §§49-c, 49-d, 49-d-1, 49-d-2, [and] 49-d-3, 49-d-6, and 49-d-7 and Texas the Water Code, Chapters 15, 16, and 17.

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

Change order—The documents issued by the participating political subdivision, [with concurrence of the contractor upon recommendation of the project engineer and with the approval and consent of the executive administrator, development fund manager, board and/or commission, as may be appropriate,] authorizing a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.

Class I non-hazardous industrial solid waste—Any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 United States Code, §6901 et seq.).

Department—The Texas Department of Health.

Development funds—Such monies as are accumulated in the treasury of the State of Texas from the sale of Texas water de-

velopment bonds authorized by the Texas Constitution, Article III, §49-c and §49-d and from bonds dedicated to use for the purposes of those sections under the Texas Constitution, Article III, §§[§]49-d-2, 49-d-6, and 49-d-7.

Garbage—Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act 42 United States Code 6901 et seq., as amended.

Industrial solid waste—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

License—The formal written approval issued to the applicant by the county for a municipal solid waste facility.

Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

Municipal solid waste facility—All structures, appurtenances, equipment, and improvements, including land and sanitary landfills, necessary for management of municipal solid waste, or any other solid waste, excluding hazardous waste and Class I non-hazardous industrial solid waste (other than wastes which are Class I solely because of asbestos content), for which state law authorizes management in municipal solid waste facilities regulated by the department.

Municipal solid waste management—The systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery or disposal of municipal solid waste.

Permit—Includes any one of the following:

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

(E) the formal written approval issued to the applicant by the department for a municipal solid waste facility.

Permit application, Part B—The technical information required for landfill sites serving less than 5,000 persons as described by 25 TAC, §325.73 (relating to Technical Information Required for Landfill Sites Serving Less Than 5,000

Persons—Permit Application, Part B).

Project—Any engineering undertaking, acquisition or construction for the purpose of any one or more of the following, as applied to the Water Loan Assistance Program, Water Development Program, Water, Wastewater, and Storage Facilities Acquisition Program, Water Quality Enhancement Program, or Flood Control Program, as may be appropriate:

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

(C) transportation of water, including any system necessary for the transporting of water to filtration and treatment plants or from filtration and treatment plants to storage, including facilities for transporting waters from such storage or plants to [wholesale] purchasers;

(D)-(F) (No change.)

(G) municipal solid waste management, including any land, and structures, other appurtenances, equipment, and improvements on the land used for processing, treating, storing, or disposing of municipal solid waste, or any other solid waste excluding hazardous waste and Class I non-hazardous industrial solid waste (other than wastes which are Class I solely because of asbestos content), for which state law authorize s management in municipal solid waste facilities regulated by the department;

(H) conservation, involving those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Putrescible waste—Solid wastes which are capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors or gases and capable of providing food for, or attracting, birds and disease vectors.

Regional facility—A water supply, wastewater collection and treatment, municipal solid waste facility, or other system which incorporates multiple service areas or drainage areas into an areawide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state, the specified size of which is determined by any one or combination of population, number of governmental entities served, and/or service capacity. Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.

Registration—The act of filing information for specific solid waste management activities as determined by the department.

Rubbish—Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and the like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

Sanitary landfill—A controlled area of land upon which municipal solid waste is disposed in accordance with standards, rules, or orders established by appropriate state and federal agencies.

Site assessment—The review and analysis of a site upon which a municipal solid waste facility is proposed to determine whether the site has previously been used for the disposal of hazardous substances or solid wastes.

Site development plan—A document prepared by the design engineer, which provides a detailed design with supporting calculations and data for the development and operation of a municipal solid waste facility as described in 25 TAC, §325.74 (relating to Technical Information Required for Landfill Sites Serving 5,000 Persons or More—Site Development Plan).

Solid waste—Garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or manmade inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101.

Water development bonds—Bonds authorized by the Texas Constitution, Article III, §49-c, and §49-d, and bonds dedicated to use for the purposes under Texas Constitution, Article III, §§[§] 49-d-2, 49-d-6, and 49-d-7.

Water quality enhancement bonds—The Texas water development bonds authorized by the Texas Constitution, Article III, §49-d-1, and bonds dedicated to use for the purposes of that section by the Texas Constitution, Article III, §§[§] 49-d-2, 49-d-6, and 49-d-7.

Water quality enhancement funds—The proceeds from the sale of Texas water development bonds issued under the authority of the Texas Constitution, Article III, §49-d-1, and proceeds from bonds dedicated to use for the purposes of that section by the Texas Water Constitution, Article III, §§[§] 49-d-2, 49-d-6, and 49-d-7.

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 January 14, 1991.

TRD-9100398

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 463-7981

Policy Declarations

• 31 TAC §§363.31, 363.32, 363.35

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.31. General Policies.

(a) In accordance with constitutional and statutory directives, the goal of the Texas Water Development Board is to provide financing, where appropriate and in the public interest; to implement projects and programs necessary to further orderly development and management of the state's water resources; to maintain and enhance, where feasible, the quality of this resource; to reduce flood damages; and to promote measures designed to achieve conservation of the waters of the state in accordance with the intent of the Texas legislature and the people of Texas as expressed through enactment and voter approval of House Joint Resolution 6 and House Bill 2, 69th Legislature, 1985. The programs implemented by these sections will continue to assist eligible political subdivisions of the state which are unable to implement projects without state assistance (commonly referred to as hardship loans), as the water development fund has done in the past, and will further the orderly development of regional municipal solid waste facilities, water and wastewater

facilities, and flood control measures through loans, and through state participation, where applicable, in water and wastewater projects.

(b) The [In accordance with the provisions of House Bill 2, 69th Legislature, 1985, the] board will encourage local political subdivisions of the state to implement regional [water supply and wastewater treatment] facilities, consistent with the Texas Water Plan and the State Water Quality Management Plan, and flood management measures, where such facilities and measures are appropriate, more efficient and more cost-effective, and/or environmentally sound. Amendments to the Texas Constitution approved by the voters on November 5, 1985, authorize a substantial increase in the amount of state bonds which may be issued by the board to provide funds for state participation in projects, and also expand the types of water-related projects and measures eligible for state participation. Orderly planning and implementation of regional facilities will hopefully mitigate existing problems which have resulted from proliferation of multiple, commonly inefficient, and generally more costly water and wastewater systems in urban areas of the state, and may also prevent such problems from occurring in rapidly developing areas.

(c)-(d) (No change.)

§363.32. Eligible Facilities.

(a) It is the policy of the board to finance water supply projects involving reservoirs, [wholesale] storage and distribution systems, wells, and filtration and water treatment plants, including any system necessary to transport water, and projects initiated for the sole purpose of conservation as defined in the Texas Water Code, §17.001(21)(B) [from storage to points of retail distribution or from source or storage to filtration and treatment plants, or points of retail distribution].

(b) (No change.)

(c) It is the policy of the board not to finance [retail water distribution systems or] routine internal drainage facilities for cities, counties, towns, districts, or any other political subdivisions.

(d)-(f) (No change.)

(g) It is the policy of the board to finance municipal solid waste projects, including the cost of land, and structures, other appurtenances, equipment, and improvements on the land. Only hardship loans will be made for facilities not determined to be regional in scope.

§363.35. Permits. The board will require an applicant seeking assistance under the Water, Wastewater, and Storage Facilities Acquisition Program to obtain appropriate state permits before the board will extend a

commitment for financial assistance. The board may make commitments for loan-assisted projects prior to the applicant receiving all appropriate [state] permits or other authorizations from the commission, department, and/or county, [being received,] if the applicant demonstrates that it expects to receive such permits or authorizations and close the loan within the loan commitment period established in §363.38 of this title (relating to Lending Rate). The board [but] will not deliver financial assistance funds under any of the authorized financial programs until an applicant for financial assistance has obtained all appropriate [state] permits or authorizations.

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 January 14, 1991.

TRD-9100399
Suzanne Schwartz
General Counsel
Texas Water Development
Board

Earliest possible date of adoption: February 18, 1991

For further information, please call: (512) 463-7981

Applications to the Board

• 31 TAC §§363.52-363.54, 363.57, 363.58

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.52. Required General Information.

(a) (No change.)

(b) Forty copies of an application shall be filed with the board. The following information is required on all applications to the board for financial assistance:

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

(6) brief description of project including, but not limited to, the following:

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

(C) the total estimated cost and allocation of cost to each purpose such as municipal solid waste, water supply, recreation, flood control, transportation, or sewage treatment;

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

(7)-(13) (No change.)

§363.53. Required Environmental Data. The application shall address the environmental effects of the project in accordance with the requirements of §353.21-

353.26[§341.21-341.26] of this title (relating to Environmental Impact Statements) and §353.41- 353. 43[§341.41-341.43] of this title (relating to Guidelines on the Preparation of Environmental, Social, and Economic Impact Statements). Prior to taking an application to the board, the executive administrator shall determine if a complete environmental impact statement should be prepared, or if an environmental assessment following §353.42-353.43[§341.42-341.43] of this title (relating to Guidelines for the Preparation of Environmental, Social, and Economic Impact Statements) will be sufficient. For municipal solid waste projects the executive administrator will review all environmental information contained in the required engineering feasibility data report and the comments and documentation of coordination with the appropriate state and federal agencies. Normally, environmental impact statements will be required for major facilities, such as reservoirs and regional flood control projects. After reviewing the submitted environmental information, the executive administrator shall determine if sufficient environmental data have been supplied to forward the application to the board. The executive administrator shall recommend to the board whether the proposed project is environmentally sound, based on the criteria and guidelines of the board and full consideration of the views and comments of other agencies and persons.

§363.54. Required Fiscal Data.

(a)-(g) (No change.)

(h) If project for which state participation is desired is for purpose of extending, enlarging, or improving an existing system or facility, the following shall be submitted for each of the five preceding years to the extent available:

(1) (No change.)

(2) schedule of water or sewer rates or service charges, or garbage collection and facility tipping charges; and

(3) (No change.)

(i)-(n) (No change.)

§363.57. Required Engineering Feasibility Data for Water Quality Enhancement [Wastewater] Projects.

(a) For wastewater projects exclusive of municipal solid waste projects, the [The] applicant shall submit for approval four copies of an engineering feasibility report. Prior to submission of the report in the application, the applicant's engineer shall have met with the board's engineering staff to discuss the scope of the feasibility report. The report, as presented in the application, shall include the information regarding design criteria for sewerage systems listed under §317.1(b) of this title

(relating to General Provisions) and the following general information:

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

(3) type of treatment plant being proposed. The selection of a treatment process must take into account the cost-effectiveness and environmental compatibility of various processes; [and]

(4) cost breakdown. A detailed cost estimate for all work shall be submitted, including operation and maintenance; and[.]

(5) the identification, selection, and evaluation of alternatives, including the preparation of a cost-effective analysis of the alternatives for wastewater facilities. This cost-effective analysis must consider innovative, nonconventional methods of treatment such as rock reef, root zone, ponding, irrigation, or other technologies that may have been developed by NASA and the Tennessee Valley Authority.

(b) For municipal solid waste facility projects an applicant must meet the following requirements.

(1) The applicant shall submit four copies of a report containing the site development plan or permit application, Part B, and the general or other technical information required and accepted by the department as part of an administratively complete application or registration. In addition to the technical data contained therein, the reports shall include the following information:

(A) legal name of applicant;

(B) name and address of project engineer;

(C) a detailed cost estimate for all work to be performed, including all land, equipment, all fees for professional services, and projected operation and maintenance costs; and

(D) the comments of and documentation of coordination with the appropriate state and federal agencies;

(E) any compliance summaries prepared by the department;

(F) a statement describing the types and estimated volume of any industrial solid wastes managed or proposed for management at the facility, and in addition, for an applicant requesting financial assistance for an existing facility, a statement describing the nature and estimated volume of historical industrial solid waste management at the facility;

(G) for an applicant requesting financial assistance for a new facility, the results of a site assessment prepared by a qualified, independent third party professional(s) acceptable to the board, determining whether the proposed site selected for the facility has previously been used for the disposal of hazardous substances or solid wastes;

(H) for an applicant requesting financial assistance for an existing facility, the results of a site assessment, prepared by a qualified, independent third party professional(s) acceptable to the board, determining whether the facility is releasing or threatening to release, hazardous substances, solid waste, or constituents thereof to air, soils, ground, or surface waters in violation of state or federal environmental laws; and

(I) any additional information or data which the executive administrator may require.

(2) The board may require that the applicant retain a qualified, independent third party professional(s) acceptable to the board to assist the board in its evaluation of the applicant's report and of the environmental risks associated with the project. The fees for such services to the applicant may be included in the cost estimate for the project.

§363.58. Required Legal Data.

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

(d) The applicant shall submit a copy of any actual or proposed contract under which any portion of the applicant's water supply is purchased or transported, [or] under which sewer service is provided, or under which municipal solid waste collection and disposal services are provided. Before a loan is closed, a certified copy of such contract shall be required.

(e)-(g) (No change.)

(h) The applicant shall submit a copy of any existing proposed construction contract.

(1) All proposed contracts shall have provisions assuring compliance with the board's rules and all relevant statutes, including the Texas Water Code, Chapters 15-17, as appropriate. Further, the contract shall provide that failure to construct the project according to the plans and specifications site development plan; permit application, Part B; permit; and/or registration approved by the executive administrator, development fund manager, board, department, and/or the commission, as is appropriate, for any and all modifications, amendments, or changes to such engineering plans, regardless of the nature, character, or extent of such changes; failure

to construct the project in accordance with sound engineering principles; or failure to comply with any term or terms of the construction contract, shall be considered by the development fund manager as grounds for refusal to give a certificate of final approval for any construction contract. Such contract shall also require the contractor to observe all rules of the board. The provisions of the contract shall constitute an agreement for the benefit of the board under principles applicable to third party beneficiary contracts; however, such provisions are not intended nor shall they be in such form as to constitute an agreement for the benefit of any other third party or parties other than the board.

(2) The participating political subdivisions shall be represented by a registered professional engineer who shall inspect the project at each phase of construction to assure construction in substantial compliance with the plans and specifications site development plan; permit application, Part B; permit; and/or registration and in accordance with sound engineering principles and the terms provisions of the construction contracts.

(3) (No change.)

(i)-(m) (No change.)

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

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Suzanne Schwartz
General Counsel
Texas Water Development
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◆ ◆ ◆
Prerequisites to Release of State Funds

• 31 TAC §§363.81, 363.83, 363.84

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.81. Engineering Design Data Prerequisites.

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

(c) An applicant seeking financial assistance for a municipal solid waste project pursuant to the Water Quality Enhancement Program must meet the following requirements.

(1) The applicant shall submit three copies of plans and specifications, or other appropriate engineering design documents each of which conform to the representations made in the loan applica-

tion. The plans and specifications must be as detailed as would be required for submission to contractors bidding on the work. In addition, the applicant shall submit a draft copy of the construction contract bid documents for each construction contract to be let.

(2) The board may require that the applicant retain a qualified, independent third party professional(s) acceptable to the board to assist the board in its evaluation of the plans and specifications or other appropriate engineering design documents, and of the environmental risks associated with the project and in conduct of inspections of construction and materials. The fees for such services to the applicant may be included in the cost estimate for the project.

(3) If the applicant chooses to construct the project using its own employees and material (use force account) the application must certify that:

(A) the applicant and personnel who will perform the work possess the necessary competence required to perform the work and can schedule and accomplish the force account work in a timely manner;

(B) the applicant will maintain insurance that is adequate and customary for construction or project work, including, but not limited to, fire and casualty, workers' compensation, liability, and all risk insurance as required by local or state law; and

(C) the applicant either has or will establish a proper record keeping system to assure that all materials, supplies, equipment, and labor costs charged to the project are actually used in connection with the project.

(d)[(c)] All applicants shall comply with the following.

(1) The plans, specifications, and the engineering [engineer] report shall be signed and sealed by a professional engineer registered in the State of Texas in accordance with the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a. The engineering report and/or site development plan or permit application, Part B shall not be dated more than six months prior to filing with the executive administrator or development fund manager.

(2)-(5) (No change.)

(e)[(d)] The board, executive administrator, or development fund manager may require the submission of additional engineering data and information, if deemed necessary.

§363.83. Resolutions, Permits, and Other Authorizations as Prerequisites [Commission Permits and Resolution Prerequisite].

(a) Prior to the release of state funds for any financial assistance, the applicant must obtain all required permits or other authorization from the commission; department; and/or county to appropriate, impound, divert, use or transport state waters, or to construct municipal solid waste or wastewater facilities as may be appropriate under the circumstances, or submit any other permit or approval that may be required by other state agencies [the commission].

(b) In addition to furnishing the board with certified copies of appropriate permits, the applicant shall furnish the board a resolution adopted by the commission certifying that an applicant proposing surface water development has the necessary water right authorizing it to appropriate and use the water the project will provide and/or that an applicant proposing underground water development has the right to use water that the project will provide.]

(b)(c) For a water or storage facilities acquisition project, the board may at its discretion become a co-applicant for a commission permit.

§363.84. Legal and Fiscal Document Prerequisites. The documents which shall be required prior to the release of state funds shall include the following as appropriate:

(1)-(9) (No change.)

(10) a certified copy of each contract under which revenues from the project will accrue;

(11)[(10)] a proposed act of assurance in a form acceptable to the board to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;

(12) [(11)] a certified copy of appropriate commission permits for those projects involving the appropriation, impoundment, use, diversion, or transportation of state water or for discharge of waste into or adjacent to water in the state;

(13) for a municipal solid waste facility project, evidence of:

(A) issuance of a municipal solid waste permit or other authorization by the department or county; and

(B) insurance coverage obtained by the participating political subdivision naming the participating political subdivision, the board, and any other party who is an owner or operator of the facility as insureds and at a minimum including a comprehensive/commercial general liability insurance policy

and a property insurance policy with a multi-peril coverage in an amount deemed appropriate in light of the degree and duration of risks associated with the facility. This requirement may be waived by the board if such insurance is unavailable to the participating political subdivision and the participating political subdivision agrees to establish a reserve fund to pay and satisfy claims relating to environmental risks in an amount which is deemed appropriate in light of the degree of risks associated with the facility;

(14) [(12)] for a wastewater project, evidence of commission approval of plans and specifications;

(15)[(13)] any further proposed leases or other agreements transferring any interest in land acquired for the project subsequent to those furnished under §363.58(1) of this title (relating to Required Legal Data);

(16)[(14)] such other instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; including, but not limited to, in case of municipal solid waste facility projects:

(A) representations, warranties, agreements, and covenants by the participating political subdivision relating to or addressing environmental matters and conditions; and

(B) agreements by the participating political subdivision to indemnify the board on all environmental claims arising out of the facility, including any additional agreements, documents, or instruments necessary to ensure the validity and enforceability of the indemnity; and

(17)[(15)] approval of project plans and specifications. Water projects funded by the water loan assistance fund or water development fund, water or storage facilities acquisition projects, or structural flood control projects shall not be eligible for state participation in the event engineering plans and specifications have not been approved by the development fund manager or executive administrator, as appropriate, prior to closing the loan. A water quality enhancement project shall not be eligible for state participation in the event engineering plans and specifications have not been approved by the executive administrator and/or commission, as is appropriate, prior to closing the loan.

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

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◆ ◆ ◆
Construction Phase for Water Assistance Fund, Water Development, Flood Control, and Water Quality Enhancement Projects

• **31 TAC §§363.104-363.106**

The amendments are proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.104. Inspection During Construction. After the construction contract is awarded, the participating political subdivision shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications; other engineering design documents; site development plan or permit application, Part B; permit; [.] approved alterations;[,] and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction of any project at any time in order to assure that plans and specifications; other engineering design documents; site development plan or permit application, Part B; and permit are being followed and that the works are being constructed in accordance with sound engineering principles and construction practices, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the participating political subdivision, the department, and the project engineer any variances from the approved site development plan or permit application, Part B; permit; other engineering design documents; or plans and specifications. The participating political subdivision and the project engineer shall immediately initiate necessary corrective action.

§363.105. Alterations in Approved Plans and Specifications.

(a) For water supply, flood control, and wastewater projects, if [If] after the executive administrator or development fund manager approves engineering plans and specifications it becomes apparent that changes in such plans and/or specifications are necessary or appropriate, a change order and justification therefore shall be submit-

ted for approval, well in advance of the construction alteration when possible. The executive administrator or development fund manager may approve and authorize a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the plans and specifications, and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved plans and specifications which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved plans and specifications of the project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or property, tentative approval of change orders may be secured from the executive administrator, or development fund manager via telephone and confirmed by letter or telegraph. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator or development fund manager to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations by the board, executive administrator, or development fund manager, as is appropriate, copies of the approved change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

(b) For municipal solid waste projects, if after the department approves the site development plan or permit application, Part B, it is determined that a deviation is necessary and the loan recipient has obtained department approval in accordance with 25 TAC §325.111 (relating to General Requirements), a copy of the revised plan and documentation of department approval will be submitted to the executive administrator, along with any necessary change orders and justification for the change orders. If it is determined that changes to approved plans and specifications or other engineering design documents are necessary or appropriate and do not require a revision to the site development plan or permit application, Part B, a change order, with justification, will be submitted to the executive administrator. All requests for changes shall be submitted well in advance of the construction alteration, when possible. The executive administrator may approve and autho-

rize a change, alteration, or variance in previously approved engineering plans and specifications, or other design documents including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project; is not a substantial or material alteration in the plans and specifications; and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved plans and specifications or engineering design documents which involves an alteration in the basic purpose or effect of a project; substantially or materially alters the previously approved plans and specifications or design documents of the project; or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. In addition, the executive administrator, at his option, may require the loan recipient to obtain written approval by the department of any change not previously approved by the department. Emergency situations may be addressed to the executive administrator by telephone. A request for a change order or deviation from the site development plan or permit application, Part B, should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations by the board or executive administrator, as is appropriate, copies of the approved change order shall be forwarded to the project engineer.

§363.106. Inspection of Materials.

(a) (No change.)

(b) In the event construction procedures or materials are determined by the executive administrator to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, other engineering design documents, site development plan, or permit application, Part B or permit, the executive administrator may order the participating political subdivision to take such action through the project engineer in the manner provided for in the construction contract to correct any such deficiency.

(c)-(d) (No change.)

(e) The executive administrator or development fund manager is authorized to conduct engineering and financial audits of every project which is financed in whole or in part by Texas water development funds. For purposes of this section, the following definitions are applicable.

(1) (No change.)

(2) Engineering audit-An engineering audit consists of a physical inspection of the project to analyze and compare the project with the approved plans and specifications, other engineering design documents, site development plan, or permit application, Part B, resulting in the issuance of a technical report which itemizes any variances from the construction contract and approved plans and specifications, other engineering design documents, site development plan, or permit application, Part B, and recommends corrective action.

(f) (No change.)

(g) The participating political subdivision shall notify the executive administrator of the date for conducting the preopening inspection as required by 25 TAC §325.112(b) (relating to Meetings and Inspections Prior to Constructing and Opening New Facilities) to enable representatives of the board to be present. Prior to accepting any municipal solid waste, the participating political subdivision shall forward to the executive administrator a copy of the department's written confirmation that construction is in compliance with the approved site development plan or permit application, Part B, and the permit.

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

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Suzanne Schwartz
General Counsel
Texas Water Development
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◆ ◆ ◆
**Water, Wastewater and Storage
Facilities Acquisition Program
Construction Phase**

• 31 TAC §363.125

The amendment is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.125. Disbursement of State Funds. State funds expended for the acquisition and/or development of facilities in a nonfederal project shall be disbursed in accordance with the provisions of the master agreement and any other contracts by the board pursuant thereto, subject to the following: in projects involving the acquisition of land, the board shall not pay or agree to pay any of the costs of land acquisition in advance, but may pay or agree to pay its pro rata portion of such costs as they accrue or on any other reasonable basis

agreed to by the board; provided, that if construction is to be paid for as work progresses, the board shall not pay or agree to pay more than 95 [90]% of its pro rata portion of the amount due at the time of each progress payment, as certified to by the project engineer; and provided further that the remaining 5.0 [10]% thereunder shall be paid only after approval by the project engineer and, in addition, upon final certification by the development fund manager that work to be performed under the terms of the construction contract has been completed in a satisfactory manner and in accordance with:

(1)-(2) (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.

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Texas Water Development
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For further information, please call: (512) 463-7981

Post-Construction Responsibilities Compliance Procedure

• 31 TAC §363.181

The amendment is proposed under the Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties.

§363.181. General Responsibilities. After the satisfactory completion of the project, the participating political subdivisions shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is expected. To facilitate such cooperation and to enable the board to protect the state's monetary investment and the public interest, the following provisions shall be observed:

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

(3) Water conservation reporting. Applicants with required water conservation programs shall report annually to the executive administrator on the implementation, status, and effectiveness of the water conservation programs until all of their financial obligations to the state have been discharged. The executive administrator may require a political subdivision which is not effectively implementing its conservation program to take corrective action. The executive administrator may refer further noncompliance by a political subdivision to the attorney general, or may take other corrective actions deemed appropriate to assure compliance; and[.]

(4) **Municipal solid waste facility project reporting.** Participating political subdivisions receiving financial assistance for municipal solid waste facility projects shall provide copies of, and notify the board within 10 days following the receipt of, any notices of violation received from environmental regulatory agencies; notices of any claims or suits filed by regulatory agencies or third parties relating to environmental matters or conditions at the facility; and any notices received from insurance carriers relating to environmental conditions at the facility. In addition, the participating political subdivision shall provide the board with copies of any reports filed with insurance carriers relating to environmental conditions at the facility and shall notify the board of any material changes to facility design, construction, or operation, including, but not limited to, notification of any requests for permit amendment. The participating political subdivision shall also provide immediate notification to the board of any discharge or release of hazardous substances, solid wastes, or constituents thereof from the facility.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter S. Reimbursement Methodology for Nursing Facilities

• 40 TAC §§19.1805-19.1807

The Texas Department of Human Services (DHS) proposes amendments to §§19.1805-19.1807, concerning list of unallowable costs, cost finding methodology, and rate setting methodology. The purpose for the amendments is to change existing cost finding methodology with regard to revenue offsets and fixed capital asset charges.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$17,359,147 for fiscal year 1991; \$17,598,607 for fiscal year 1992; \$18,430,945 for fiscal year 1993; \$19,724,015 for fiscal year 1994; and \$20,999,535 for fiscal year 1995. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that providers are appropriately reimbursed in relation to the cost of doing business. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Marc Gold at (512) 450-3174 in DHS's Institutional Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-564, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§19.1805. List of Unallowable Costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in §19.1803(a) and (b) of this title (relating to Allowable and Unallowable Costs):

(1)-(17) (No change.)

(18) tuition costs for nurse aide training required for certification, including course fees and associated materials and supplies [expenses incurred in the purchase of goods and services with revenues from gifts, donations, endowments, and trusts];

(19)-(33) (No change.)

§19.1806. Cost Finding Methodology.

(a) Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating [must eliminate] unallowable expenses from the cost report. The Texas Department of Human Services (DHS) reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the rate base if there is reason to

doubt the accuracy or allowability of a significant part of the information reported.

(1) DHS [The Texas Department of Human Services (DHS)] excludes from the rate base [any] unallowable costs [expenses] included on the cost report and makes adjustments to [expenses] reported costs [by providers] to ensure that the rate base reflects costs that [which]:

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

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to [If there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, DHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following]:

(A) Revenue offsets. DHS offsets against reported expenses certain types of nonoperating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs include income from [DHS distinguishes between two types of revenues: recipient revenues and other revenues. Recipient revenues are contractual payments for basic services provided in nursing facilities. Recipient revenues include payments by recipients, their families and third parties such as Medicaid, Medicare, private insurance and federal, state and local government. Other revenues include interest income, gifts, grants, donations from private sources,] beauty and barber shop operations [receipts], prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees or guests. [These other revenues are used to offset reported expenses after allowances for reasonable overhead costs.] Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual NFs.

(B) Fixed capital asset costs. Effective September 1, 1990, fixed capital asset costs are reimbursed in the form of a use fee calculated as described under §19.1807(b)(1) of this title (relating to Rate Setting Methodology). Consequently, the following fixed capital charges are excluded from the rate base for purposes of calculating the general, administration, and dietary cost component; building and building equipment depreciation and lease expense; mortgage interest; land improvement depreciation; and

leasehold improvement amortization. This exclusion does not apply to rates for facilities in the pediatric care reimbursement class described under §19.1807(c)(2) of this title (relating to Rate Setting Methodology). Rates for the pediatric care class are based on allowable charges for fixed capital assets rather than the use fee formula specified under §19.1807(b)(1) of this title (relating to Rate Setting Methodology). [DHS defines a historical base for fixed capital asset costs which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values which constitute the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly-constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from DHS records, fixed capital asset expenses are based upon the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base will be limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985, in the following manner.]

[(i) Increases in buildings depreciation and rental or lease expense for buildings rented or leased from a related party are allowed when facilities undergo changes in ownership, and are limited to the lesser of:

[(I) the current expense reported by the provider; or

[(II) the previous allowable expense from the historical base adjusted by a capital asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).]

[(ii) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

[(I) the actual mortgage interest expense incurred by the new owner of record during the current cost reporting period; or

[(II) an amount based upon allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of the sale. DHS determines an interest rate index appropriate for this purpose as specified in §24.301 of this title (relating to Determination of Inflation Indices).]

[(iii) Increases in rental or lease expense on buildings not rented or

leased from related parties are limited to the lesser of:

[(I) the current expense reported by the provider; or

[(II) the allowable expense from the historical base adjusted by a capital asset inflation index as specified in §24.301 of this title (relating to Determination of Inflation Indices).]

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

(b) (No change.)

§19.1807. Rate Setting Methodology.

(a) (No change.)

(b) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under provisions of the Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). The Texas Board of Human Services determines reimbursement rates for NFs based on consideration of DHS staff recommendations. To develop reimbursement rate recommendations for NFs, DHS staff apply the following procedures.

(1) Rate Components [Cost centers]. Under the case mix methodology, rates are comprised of three cost-related components: the Recipient Care component; the General, Administration, and Dietary component; and the Fixed Capital Asset component. [The case-mix payment methodology derives rates from two components: the recipient care rate component and the all-other cost rate component, which includes dietary, facility, and administration costs. The recipient care rate component varies according to the case-mix class of service. The all-other cost component is constant across case-mix classes. The methodology for determining the all-other cost rate component consists of the following two steps.]

(A) The Recipient Care rate component varies according to the case mix class of service. [The cost component for the all-other cost center is calculated at the median point in the array of per diem costs for all contracted nursing facilities (NFs) included in the rate base, after the costs are adjusted as specified in §§19.1801-19.1806 of this title (relating to General Reimbursement Information, Cost Reporting Procedures, Allowable and Unallowable Costs, List of Allowable Costs, List of Unallowable Costs, and Cost Finding Methodology).]

(B) The General, Administration, and Dietary component is constant across all case mix classes. This

component is calculated at the median point in the array of projected allowable per diem costs for all contracted nursing facilities included in the rate base, multiplied by 1.07. [The cost component for the all-other cost center is multiplied by an incentive factor which yields the all-other costs rate component. The Texas Board of Human Services determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.]

(C) The Fixed Capital Asset component is calculated as follows:

(i) Determine the 80th percentile in the array of allowable appraised property values per licensed bed, including land and improvements. Appraised values for this purpose are determined by the most recent appraisal available from local property taxing authorities and reported on the Texas Medicaid cost report. Those facilities which do not report an appraisal from local taxing authorities are not included in the array for purposes of calculating the use fee.

(ii) Project the 80th percentile of appraised property values per bed by one-half the forecasted increase in the Implicit Price Deflator for Personal Consumption Expenditures (IPD-PCE) from the cost reporting year to the rate year.

(iii) Calculate an annual use fee per bed as the projected 80th percentile of appraised property values per bed times an annual use rate of 14%.

(iv) Calculate a per diem use fee per bed by dividing the annual use fee per bed by annual days of service per bed at the higher of 85% occupancy, or the statewide average occupancy rate during the cost reporting period.

(v) For rates effective January 1, 1991, and thereafter, the increase in the use fee is limited to the lesser of the fee as calculated in subsection (b)(1)(C) (i)-(iv) of this section, or the fee as calculated by inflating the fee from the previous rate period by the forecasted rate of change in the IPD-PDE.

(2) (No change.)

(3) Per diem rate methodology. Staff determine per diem rate recommendations for each of the 11 TILE groups and for the default group according to the following procedures:

(A) [statewide average case-mix index.] Determine the statewide average case-mix index for all Medicaid recipients, except those in the default group. Weight the indexes from subparagraph (B) of this paragraph, which are based on a sample of nursing facilities, by the estimated statewide recipient days of service

by case-mix group during the cost reporting period covered by the rate base. In determining rates effective January 1, 1992, and thereafter, the statewide average index in based on the most recent and complete data available indicating recipient days of service by case mix group which correspond to the period covered by the cost reports included in the rate base. Since reasonably complete data on days of service by case mix group corresponding to complete cost reporting periods are not available for periods prior to fiscal year 1990, rates effective prior to January 1, 1992, are based on an average case-mix index determined as follows:

(i) Rates effective September 1, 1990, are based on the same distribution of days of service by case-mix group used to determine the initial case-mix rates effective April 1, 1989, through December 31, 1989.

(ii) Rates effective January 1, 1991, through December 31, 1991, are based on the most recent and complete data available indicating days of service by case mix group during the period April 1, 1989, through June 3, 1989.

(B) Standardized statewide case-mix indexes. Determine the standardized statewide case mix index for each of the 11 TILE groups by dividing each of the indexes described under subsection (b)(2) of this section by the statewide average case-mix index described under subsection (b)(3)(A) of this section. [average recipient care rate component. To determine the average recipient care rate component, adjust the raw sum of recipient care costs in all Texas Nursing Facilities in the current cost report data base in order to account for disallowed costs and inflation, as specified in this subsection and §§19.1801, 19.1803, and 19.1806 of this title (relating to General Reimbursement Information, Allowable and Unallowable Costs-General Information, and Cost Finding Methodology). Then divide the adjusted total by the sum of recipient-days of service in all facilities in the current cost report data base. Multiply the resulting weighted, average per diem cost of recipient care by the incentive factor described in paragraph (1)(B) of this subsection. The result is the average recipient care rate component;]

(C) Average recipient care rate component. To determine the average recipient care rate component, adjust the raw sum of recipient care costs in all nursing facilities included in the rate base in order to account for disallowed costs and inflation, as specified in §§19.1801-19.1806 of this title (relating to General Reimbursement Information, Cost Reporting Procedures, Allowable and Unallowable Costs-General Information, List of Allowable Costs, List of Un-

allowable Costs, and Cost Finding Methodology). Then divide the adjusted total by the sum of recipient days of service in all facilities in the current rate base. Multiply the resulting weighted, average per diem cost of recipient care by 1.07. The result is the average recipient care rate component. [case-mix pricing factor. To determine the case-mix pricing factor, divide the average recipient care rate component from subparagraph (B) of this paragraph by the statewide average case-mix index from subparagraph (A) of this paragraph;]

(D) Case-mix recipient care per diem rate components. To calculate the recipient care per diem rate component for each of the 11 TILE case-mix groups and for the default group, multiply each of the standardized statewide case-mix indexes from subsection (b)(3)(B) of this section by the average recipient care rate component from subsection (b)(3)(C) of this section. [case-mix recipient care per diem rate components. To calculate the recipient care per diem rate component for each of the 11 TILE case-mix groups and for the default group, multiply the case-mix pricing factor from subparagraph (C) of this paragraph;]

(E) Total case-mix per diem rates. For each of the 11 TILE case-mix groups and for the default group, the recommended total per diem rate is the sum of the following three rate components: [total case-mix per diem rates. For each of the 11 TILE case-mix groups and for the default group, the recommended total per diem rate is the sum of the group's case-mix recipient care per diem rate component from subparagraph (D) of this paragraph, and the all-other cost rate component from paragraph (1) (B) of this subsection.]

(i) the group's case-mix recipient care per diem rate component by case-mix group from subsection (b)(3) of this section;

(ii) the general, administration, and dietary rate component from subsection (b)(1)(B) of this section.

(iii) the fixed-capital-asset use fee component from subsection (b)(1)(C) of this title.

(4)-(7) (No change.)

(c)-(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 January 11, 1991.

TRD-9100322

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

Proposed date of adoption: April 1, 1991

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

◆ ◆ ◆
**Chapter 48. Community Care
for Aged and Disabled**

Eligibility

• **40 TAC §48.2906**

The Texas Department of Human Services (DHS) proposes to amend §48.2906, concerning eligibility, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to allow children who are Waiver V clients to receive family care services without regard to age.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford 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 to prevent

service gaps and service denials for children who are now receiving services under Waiver V. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Tom Gibbons at (512) 450-3217 in DHS's Long Term Care Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-003, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§48.2906. Age.

(a) Except as specified in subsections (b) -(d) [(c)] of this section, clients must be at least 18 to receive CCAD services.

(b) No age limits apply to CCAD Medicaid services (primary home care and day activity and health services).

(c) Emancipated minors may receive CCAD services without regard to age.

(d) No age limits apply for family care services to clients whose primary home care services terminate due to the end of Waiver V.

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 January 10, 1991.

TRD-9100257

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

Proposed date of adoption: May 1, 1991

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

◆ ◆ ◆

Withdrawn Sections

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

TITLE 16. ECONOMIC REGULATION Part VIII. Texas Racing Commission

Chapter 321. Pari-mutuel Wagering

Subchapter A. General Provi- sions

Regulation of Wagering

• 16 TAC §321.71

The Texas Racing Commission has withdrawn from consideration for permanent adoption a proposed new §321.71 which appeared in the December 14, 1990, issue of the *Texas Register* (15 TexReg 7143). The effective date of this withdrawal is January 11, 1991.

Issued in Austin, Texas, on January 11, 1991

TRD-9100365 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

For further information, please call: (512)
794-8461

◆ ◆ ◆
The Texas Racing Commission has withdrawn the emergency effectiveness of new §321.71, concerning the regulation of wagering. The text of the emergency new §321.71 appeared in the December 14, 1991, issue of the *Texas Register* (15 TexReg 7138). The effective date of this withdrawal is January 11, 1991.

Issued in Austin, Texas, on January 11, 1991

TRD-9100364 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 11, 1991

For further information, please call: (512)
794-8461

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 141. Teacher Certification

Subchapter B. Certificates Issu- ance Procedures

• 19 TAC §141.23

The Texas Education Agency has withdrawn from consideration for permanent adoption a proposed repeal section which appeared in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3955). The effective date of this withdrawal is February 4, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100420 Criss Cloudt McCuller
Director for Planning
Coordination
Texas Education Agency

Effective date: February 4, 1991

For further information, please call: (512)
463-9701

TITLE 31. NATURAL RE- SOURCE AND CON- SERVATION

Part X. Texas Water Development Board

Chapter 363. Rules Relating to Financial Programs

Subchapter A. Financial Assis- tance for Water Supply, Water Quality Enhancement, Flood Controls and Acquisi- tion

Introductory Provisions

• 31 TAC §363.1, §363.2

The Texas Water Development Board has withdrawn from consideration for permanent adoption a proposed amended section which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4557). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100392 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆ Policy Declarations

• 31 TAC §§363.31, 363.32, 363.35

The Texas Water Development Board has withdrawn from consideration for permanent adoption proposed amended sections which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4558). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100393 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆ Applications to the Board

• 31 TAC §§363.52-363.54, 363.57, 363.58

The Texas Water Development Board has withdrawn from consideration for permanent adoption proposed amended sections which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4557). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100394 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆ Prerequisites to Release of State Funds

• 31 TAC §§363.81, 363.83, 363.84

The Texas Water Development Board has withdrawn from consideration for permanent adoption proposed amended sections which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4560). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100395 Suzanne Schwartz

General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆
Construction Phase for Water
Assistance Fund, Water De-
velopment, Flood Control,
and Water Quality Enhance-
ment Projects

• 31 TAC §§363.104-363.106

The Texas Water Development Board has withdrawn from consideration for permanent adoption proposed amended sections which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4561). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100396

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆
Water, Wasterwater, and Stor-
age Facilities Acquisition
Program Construction Phase

• 31 TAC §363.125

The Texas Water Development Board has withdrawn from consideration for permanent adoption a proposed amended section which appeared in the August 10, 1990, issue of the *Texas Register* (15 TexReg 4562). The effective date of this withdrawal is January 14, 1991.

Issued in Austin, Texas, on January 14, 1991

TRD-9100397

Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: January 14, 1991

For further information, please call: (512)
463-7981

◆ ◆ ◆

Adopted Sections

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

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

TITLE 16. ECONOMIC REGULATIONS

Part VIII. Texas Racing Commission

Chapter 309. Operations of Racetrack

Subchapter A. General Provisions

Operations

• 16 TAC §309.56

The Texas Racing Commission adopts an amendment to §309.56, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 6568).

The amendment is adopted to ensure that pari-mutuel race tracks will be operated in a responsible manner.

The amendment requires an association to issue temporary passes and stipulates to whom the temporary pass may be issued.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on January 9, 1991.

TRD-9100362 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 1, 1991

Proposal publication date: November 16, 1990

For further information, please call: (512) 794-8461

Chapter 311. Conduct and Duties of Individual Licensees

Subchapter A. General Provisions

• 16 TAC §311.15

The Texas Racing Commission adopts new §311.15, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 6568).

The new section is adopted to ensure that pari-mutuel racing is of the highest integrity and operated in a responsible manner.

The new section relates to the financial responsibilities of licensees of the commission for debts legally owed for supplies or services relating to the care, transportation, or maintenance of a race animal.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing involving wagering and for administering the Texas Racing Act.

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

Issued in Austin, Texas on January 9, 1991.

TRD-9100363 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 1, 1991

Proposal publication date: November 16, 1990

For further information, please call: (512) 794-8461

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 141. Teacher Certification

Subchapter B. Certificates Issuance Procedures

• 19 TAC §141.27

The Texas Education Agency (TEA) adopts new §141.27, without changes to the proposed text as published in the July 13, 1990, issue of the *Texas Register* (15 TexReg 3956). The new section enables previously certified teachers to add certificates for a different level or subject and allows secondary teachers to acquire additional teaching fields through the successful completion of the appropriate certification examination. In addition, teachers who possess a valid classroom teaching certificate and a bachelor's degree could qualify for an additional certification in a subject or at a level not covered by the teacher's existing certificate. Teachers can qualify for the additional certification by passing the appropriate Examination for the Certification of Educators in Texas (ExCET) and then successfully completing a one-year internship. The new section also sets guidelines for the internship.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §13.0321, which provides the State Board of Education with the authority to adopt rules allowing certified teachers to qualify for additional certification based on examination.

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 January 14, 1991.

TRD-9100421 W. N. Kirby
Commissioner of Education

Effective date: February 4, 1991

Proposal publication date: July 13, 1990

For further information, please call: (512) 463-9701

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 27. State Fire Marshal

Subchapter A. Fire Extinguisher Rules

• 28 TAC §27.16

The State Board of Insurance adopts an amendment to §27.16, without changes to the proposed text as published in the November 23, 1990, issue of the *Texas Register* (15 TexReg 6730).

Section 27.16 concerns license fees for firms and individuals engaging in the fire extin-

guisher business. The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for this licensing program.

The amendment increases initial and renewal fees for all types of licenses and certificates of registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5. 43-1, §2 and §8, which provides the board with the authority to adopt rules necessary for the protection and preservation of life and property, in controlling the registration of firms engaged in the business of planning, selling, installing, maintaining, or servicing fire extinguisher systems and equipment.

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 January 11, 1991.

TRD-9100387 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 1, 1991

Proposal publication date: November 23, 1990

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

Subchapter B. Fire Alarm Rules

• 28 TAC §27.215

The State Board of Insurance adopts an amendment to §27.215, without changes to the proposed text as published in the November 23, 1990, issue of the *Texas Register* (15 TexReg 6732).

Section 27.215 concerns license fees for firms and individuals engaging in the fire alarm business. The amendment is necessary to increase fees because the current fees are generating revenue far less than the cost of administration and enforcement necessary for this licensing program.

The amendment increases initial and renewal fees for all types of licenses and certificates of registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 1.04, which provides the State Board of Insurance with the authority to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 5. 43-2, §4 and §6, which provides the board with the authority to adopt rules necessary to administration of regulation controlling fire alarm and detection devices and systems through the state fire marshal for the protection and preservation of life and property.

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 January 12, 1991.

TRD-9100388 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 1, 1991

Proposal publication date: November 23, 1990

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

Part II. Texas Workers' Compensation Commission

Chapter 124. Compensation Procedures-Carriers: Required Notices and Mode of Payment

• 28 TAC §124.6

The Texas Workers' Compensation Commission adopts new §124.6, with changes to the proposed text as published in the October 26, 1990, issue of the *Texas Register* (15 TexReg 6173).

The new section is adopted in order to implement the requirements of the Texas Workers' Compensation Act, Article 8308, and to describe the notice of refused or disputed claim that a carrier is required to file for specific benefits.

New §124.6 requires a carrier that refuses to begin payment of temporary income benefits, lifetime income benefits, or death benefits to notify the commission and the claimant or representative on a Form TWCC-21 and in the manner prescribed by the commission. The section lists the information required to be included in the notice and requires, for temporary and lifetime income benefits, that the notice be filed no later than seven days following receipt of written notice of injury if benefits are not paid. For death benefits, the section requires payment of benefits, or filing of a notice of refused or disputed claim, no later than seven days following receipt of proof of eligibility for benefits, as described in applicable sections of Chapter 132 of this title. The section also makes clear that a carrier has only 60 days from receipt of written notice of the injury to contest compensability of a death. A dispute filed after that day is limited to issues of the status of a claimant as a legal beneficiary, or the amount of benefits due. The section also provides that a carrier who disputes compensability after payment of benefits has begun must file a notice containing the same information required in the notice of refusal to pay a claim; the reasons for contesting the claim must be based on an actual investigation of the facts underlying the claim. Finally, the section further clarifies the applicability of provisions for filing notices of dispute to disputes over medical bills, or over compensability of medical benefits as a whole.

Concerning proposed §124.6, one commenter suggested that subsection (c) be clarified as to whether or not the commission is requiring carriers to file a notice of refusal within 60 days of receipt of a report injury in cases where no income benefit is due, but where medical benefits may be owed. The commission agrees with the suggestion and has incorporated clarification as subsection (d), rather than part of subsection (c).

Another commenter suggested that subsection (b) be modified by adding the words "or death" at the end of the first sentence following the word "injury" and deleting the language following the first sentence. This commenter also suggested that subsection (c) be modified by deleting word "claim" in the first sentence and replacing it with the words "compensability of the injury or death." The commission disagrees with the suggestion, because the notice can also be used to notify the commission of a dispute over a claimant's status as a legal beneficiary, even if compensability of the injury is conceded. The commenter suggested that the words "or death" be added to the end of the first sentence in subsection (c) following the word "injury." The commission agrees with the suggestion, and adds the words "or death." The commenter also suggested that an additional subsection be added addressing procedures to be followed if the carrier cannot identify the employee's legal beneficiaries in a claim for death benefits or if eligibility of beneficiary has not been established. The commission agrees and has amended subsection (b) by deleting the escrow account and simply substituting deadlines for a carrier that apply to the two distinct issues of: compensability of the death; and entitlement of claimants for death benefits. The deadlines more nearly track the intent of the Act, §5.21, than did the proposed escrow account.

Another commenter suggested that subsections (b) and (c) be modified as they create problems in death benefit cases as the gap between the written notice of injury and a claim for benefits may be greater than the 60 days a carrier is given to protest and as a problem is also presented if an injured employee lives past 60 days and then dies, in which case the escrow account will not solve the problem. The commenter suggested that deadlines for death benefits run from the date that written proof of eligibility is submitted, rather than written notice of injury. The commission agrees and has previously resolved these problems, in amended subsection (b). The commenter also suggested that subsection (c) be modified as the rule is silent as to what will happen if a carrier prevails in its denial of compensability when payment was initiated by the seventh day. The commenter suggested that a procedure be established to provide reimbursement of these benefits to the carrier, by the employee. The commission disagrees, noting that there is no statutory authority for repayment unless willful intent can be established under the Act, §10.04, or pursuant to an interlocutory order under the Act, §6.15.

Another commenter suggested that subsection (b) should be deleted, or, at a minimum, rewritten to clarify its intent, operation, and what a carrier must do to comply. The commission agrees, noting that the problem has previously been resolved.

The commission has added the TWCC form number in subsection (a) for identification purposes.

Hammerman & Gainer, Texas Association of Business, Alliance of American Insurers, and American Insurance Association submitted comments against the rule. No comments specifically favorable to the rule were received.

The new section is adopted under Texas Civil Statutes, Article 8308, §2.09(a), which provide the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act, Article 8308.

§124.6. Notice of Refused or Disputed Claim.

(a) A carrier that refuses to begin paying temporary income, lifetime income, or death benefits shall notify the commission and the claimant or representative, on a Form TWCC-21 and in the manner prescribed by the commission. The notice shall contain the following information:

(1) the workers' compensation number assigned to the claim by the commission, if known when the report is made;

(2) the employee's name, address, and social security number;

(3) the claimant's name and address, if different;

(4) the employer's name and address;

(5) the carrier's name and commission-assigned identification number;

(6) the date and nature of the injury;

(7) the date the carrier received written notice of the injury and the name of the person making the notice;

(8) the name and professional license number of the person making the report for the carrier; and

(9) a full and complete statement of the grounds for the carrier's refusal to begin payment of benefits. A statement that simply states a conclusion such as "liability is in question", "compensability in dispute", "no medical evidence received to support disability", or "under investigation" is insufficient grounds for the information required by this section.

(b) The carrier must file the notice described in subsection (a) of this section, for payment of temporary income or lifetime income benefits, no later than the seventh day following receipt of written notice of injury. However, compensability of a death shall be contested no later than 60 days after the carrier has received written notice of a death, as set forth in §124.1 of this title relating to (Written Notice of Injury Defined). When compensability of a death is not contested within this time

period, the carrier shall begin payment of death benefits no later than the seventh day after the carrier has received proof of eligibility from a beneficiary (as required by §§132.2-132.6 of this title (relating to Determination of Facts of Dependent Status; Eligibility of Spouse to Receive Death Benefits; Eligibility of a Child to Receive Death Benefits; Eligibility of a Grandchild to Receive Death Benefits; Eligibility of Other Surviving Dependents to Receive Death Benefits)) unless the carrier files the notice described in subsection (a) of this section. A carrier who files such notice later than the 60th day after a carrier received written notice of a death may not raise an issue of compensability, but is limited to contesting issues related to the status of the claimant as a legal beneficiary of the deceased employee, or the amount of benefits due to the claimant.

(c) If a carrier disputes compensability after payment of benefits has begun, the carrier shall file a notice of refused or disputed claim, on or before the 60th day after the carrier received written notice of the injury or death. This notice shall contain all the information listed in subsection (a) of this section, provided that all facts set forth as grounds for contesting compensability shall be based on actual investigation of the claim, and shall describe in sufficient detail the facts resulting from the investigation that support the carrier's position.

(d) Payment, or denial of payment, of a medical bill shall be made in accordance with the Act, §4.68, and not under this section. However, a carrier that contends that no medical benefits are due because an injury is not compensable under the Act shall file a notice of refused or disputed claim as set forth in this section no later than the 60th day after receipt of written notice of injury.

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 January 9, 1991.

TRD-9100240

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 30, 1991

Proposal publication date: October 26, 1990

For further information, please call: (512) 440-3973

Chapter 126. Benefits-General Provisions Applicable to all Benefits

• 28 TAC §§126.4-126.6

The Texas Workers' Compensation Commission adopts new §§126.4-126.6, with changes to the proposed text as published in

the October 26, 1990, issue of the *Texas Register* (15 TexReg 6175).

The new sections are adopted in order to implement the requirements of the Texas Workers' Compensation Act, Article 8308, and to specify the procedures to be followed when an employee seeks an advance of income benefits based on financial hardship and to establish the procedures for requesting medical examination orders for examination of injured employees.

New §126.4 specifies the procedures to be followed when an employee seeks an advance of income benefits based on financial hardship. The section requires an employee seeking an advance to submit an application to the commission stating on a commission prescribed form the basis for the hardship and stating that the employee understands that if an advance is granted, the amount of future weekly benefit payments will be reduced. The section requires an employee receiving impairment income benefits to request an acceleration of those benefits under the Act, §4.321, before seeking an advance of benefits. The section provides for reduction of the weekly income benefits, after the carrier has paid an advance, in an amount set by the commission.

New §126.5 provides that the commission may authorize a medical examination for any reason set forth in the Act, §4.16, whether made by the carrier or a division of the commission. The section requires the request be made on a form approved by the commission and lists the information required to be included. The section provides that a carrier is entitled to only one required medical examination order under the Act, §4.16, every 180 days.

New §126.6 provides that when a request for a medical examination is made, the commission is to determine whether an examination is to be ordered. The section provides requirements for rescheduling within seven days of the examination in the event of a conflict. The section allows the employee's doctor, chosen under the Act, §4.62, to be present at the examination, but prohibits the employee's doctor from impeding the examination. The section requires the commission to hold a benefit review conference if disputed within 30 days after receiving notification that the examining doctor has released the employee to return to work. The section provides for an administrative penalty assessment against an employee who fails or refuses without good cause to appear for a scheduled examination.

Concerning proposed §126.4, one commenter suggested that subsection (a) be modified by deleting the requirement that an employee seek acceleration of impairment income benefits before an advance, because an employee may need a lump sum payment to alleviate hardship. The commission disagrees, noting that the amount of accelerated benefits may be determined in the review of the request and that this procedure is preferable to a lump sum payment which could bar access to supplemental income benefits. The commenter also suggested that subsection (b) be modified by adding the words "sufficient to cover the amount of the advance" after the word "benefits" at the end of the sentence. The commission agrees and adds the stated language. The commenter sug-

gested that subsection (c) be modified to provide that any combination of benefits, including accelerated benefits and employer payments, which allows the employee to receive 90% of pre-injury wages, will preclude the employee from receiving an advance. The commission disagrees with the suggested modification, noting that the section language is already clear. The commenter also suggested that subsection (c) be modified to take into consideration wages earned by the employee's spouse and other sources of income. The commission disagrees, noting that the Act did not include the concept of collateral income except as provided in §4.06 relating to employer payments.

Another commenter suggested that subsection (a) be modified to require the claimant to state the grounds for the hardship alleged. The commission agrees and prescribes a form, Form TWCC-47, to capture this information. The commission adds the language "that states the basis for the hardship, Form TWCC-47," after the word "application" in subsection (a). The commenter suggested that subsection (d) be modified by deleting the words "date the commission provided notice to" and replacing them with the words "receipt of notice from the commission by" in order to clarify the deadline for payment. The commission disagrees, noting that the deadline for payment may be calculated to a certain date under the proposed language. The commenter suggested that a provision be added to this rule to make clear that the claimant is required to repay any balance if benefits ultimately due are less than the amount advanced. The commission disagrees with the suggestion, noting that recoupment is limited to employer payments under the Act, §4.06 and, in cases of fraud, the Act, §10.04.

The Texas Association of Business and the American Insurance Association commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §126.5, five commenters suggested that subsection (c) be modified to allow one carrier-requested exam every 180 days per medical issue, arguing that this change would reflect legislative intent. One of these commenters likewise suggested that subsection (c) be modified by adding the words "on a single medical issue" after the word "examination." The commission disagrees with all these comments, noting that the statutory language plainly indicates that carriers are entitled to one carrier-requested examination every 180 days, not one carrier-requested exam every 180 days per medical issue. The commission also notes that a carrier can seek appointment of a designated doctor or ask the commission to seek an independent medical examination on its own motion, if issues arise within the 180-day period and the facts of the case warrant resolution of dispute by a designated doctor, or inquiry by the commission.

One commenter suggested that subsection (a)(8) be modified by deleting the word "purpose" and replacing it with the word "purposes" as there may be several reasons for requesting an exam. The commission agrees and changes the language to read "the specific purposes." The commenter also suggested that subsection (d) be deleted as the matter is covered in the impairment rules.

The commission disagrees, noting that the provision is useful for informational purposes.

One commenter suggested that subsection (a) be revised to clarify that it applies to requests for the commission to authorize medical examinations. The commission agrees, modifying the language to state "The commission may authorize a medical examination for any reason set forth in §4.16 of the Act." The commenter also suggested that subsection (c) be modified by deleting the words "at the same time" and replacing them with the words "on the same day." The commission agrees and changes the language as suggested.

The commission adds the form number, "TWCC-22" to subsection (a) for clarification.

One commenter suggested language to modify subsection (a)(5)-(9) and subsections (b)-(d), on the basis of a current board rule promulgated to implement a statute substantially the same as §4.16. The commission agreed with some of the suggestions and disagreed with others. The commission incorporates the new language "and, any reasons supporting a change of the carrier's selected doctor" in subsection (a)(6) rather than in subsection (a)(5) as suggested; other changes suggested were in the rule. The commission disagrees with the suggestion that subsection (a)(6) be modified to read "the purpose of the examination;" noting that this language is already specified in subsection (a)(8). The commission agrees with the suggestion that subsection (a)(7) be modified and substitutes the following language: "All examinations ordered must be scheduled as soon as possible, with at least 10 days notice to the claimant or his representative." The commission agrees with the suggestion that the rule include a statement that the carrier pay reasonable expenses incident to the examination and incorporates the language suggested by the commenter, in a new subsection, (a)(10). The commission agrees with the suggestion that the rule include a statement that a carrier's request should indicate that the employee has not been examined within the last 180 days and incorporates the modification in a new subsection (a)(11). The commission disagrees with the suggestion that subsection (b) be modified, noting that the subject of the commenter's proposed language (filing the request for an order with the commission) is already covered in subsections (a) and (c). The commission disagrees with the suggestion that subsection (c) be modified, noting that subsection (a)(5) already addresses the issue of concurrence to the exam by the injured employee. The commission agrees in part with the suggestion that subsection (d) be modified but, in response, adds the following language to §126.6(a): "A written agreement between the parties for an examination under §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) has the same effect as the commission's formal order."

Kemper National Insurance Companies, Health Benefit Management, Inc., Texas Association of Business, Alliance of American Insurers, American Insurance Association, and Flahive, Ogden & Latson commented against the proposed rule. No comments were received specifically favoring the rule.

Concerning proposed §126.6, one commenter suggested that subsection (c) be modified by inserting the word "treating" before the word "doctor" in the phrase "the employee's doctor." The commission disagrees, noting that the reference in the rule to the Act, §4.62, already incorporates the restriction to a treating doctor. The commenter also suggested that subsection (e) be modified by deleting the word "shall" and replacing it with the word "may," or alternatively, by adding the language "if disability is contested" at the end of the sentence, in order to avoid automatic settings of a benefit review conference in the absence of controversy. The commission agrees in part but adds instead the language "if disputed" after the word "shall."

Another commenter suggested that subsection (e) be modified by adding that the carrier may not suspend benefits pending the benefit review conference. The commission agrees and adds the following language to subsection (e): "and the carrier shall continue benefits pending the benefit review conference." The commenter also suggested that subsection (f) be deleted as the medical examination doctor should be a designated doctor in order to avoid multiple doctors and inequality in witnesses available to the parties. The commission disagrees with the suggestion, noting that §4.16(a) does not equate a commission-ordered medical examination with an examination performed by a designated doctor under §4.25(b) or 4.26(g).

One commenter suggested that subsections (a)-(g) be modified and that an additional subsection, subsection (h), an administrative penalty for failure of an employee to appear at the time scheduled for the exam, be added. One suggested modification to subsection (a) was that an order grant a request for a medical examination within 20 days if the request complies with §126.5; the modification further detailed sending of the order to the parties. The commission disagrees that subsection (a) should be modified, noting that the proposed time frame would delay the process, and that proposed subsection (a) already addresses sending of the order to the parties. The commission agrees in part with the suggestion that subsection (b) be modified, and has used the commenter's suggested language as a substituted first sentence to subsection (b). The commission disagrees with the suggestion that subsections (c), (d), (e), (f), and (g) be modified, as proposed, because the proposed section, as written, already addresses the subjects of the comments, to wit, rescheduling of examinations by employees in case of personal conflict, penalties for non-appearance at a scheduled examination, presence of the employee's doctor at the examination, filing of a medical report in accordance with §130.1 and §130.3 if maximum medical improvement is found, holding a benefit review conference upon release to work, and stating that this medical examination-ordered doctor shall not be considered a designated doctor. The same commenter suggested that the rule should provide a distance from the employee's residence within which travel to the exam may be ordered. The commission agrees with the suggestion and adds a subsection: "(h) The commission shall order examinations requiring travel of up to 75 miles from the claimant's residence unless the treating doctor certifies that such travel may

be harmful to the claimant's recovery." In response to a comment made to §126.5, the commission adds the following sentence at the end of subsection (a) for clarification: "A written agreement between the parties for an examination under §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) has the same effect as the commission's formal order." The commission modifies subsection (b) by deleting the word "ordered" in the second sentence.

American Insurance Association, Flahive, Ogden & Latson, and Texas Trial Lawyers' Association commented against the rule. No comments were received specifically favoring the rule.

The new sections are adopted under Texas Civil Statutes, Article 8308, §2.09(g), which provide the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act, Article 8308.

§126.4. Advance of Benefits Based on Financial Hardship.

(a) An employee seeking an advance of income benefits based on financial hardship shall submit a written application Form TWCC-47 that states the basis for the hardship to the commission. The application must state that the employee understands that if an advance is granted the amount of future weekly benefit payments will be reduced. An employee receiving impairment income benefits must request acceleration of those benefits under the Act §4.321, before seeking an advance of benefits.

(b) The commission shall forward a copy of the employee's application to the carrier and shall consider the employee's application and may order an advance if it determines that both a hardship exists for the employee and the employee is likely to be entitled to income benefits sufficient to cover the amount of the advance.

(c) An advance will not be granted to an employee who is receiving income benefits under the Act of at least 90% of the employee's net pre-injury wage. The net pre-injury wage of an employee is 85% of the average weekly wage, for this section.

(d) The commission shall notify the insurance carrier and the injured employee in writing when an advance is ordered. The notice shall include the amount of the advance to be paid; this amount shall not exceed four times the maximum weekly benefit for temporary income benefits as computed under the Act, §4.11. The insurance carrier shall pay an advance ordered by the commission within seven days of the receipt of notice from the commission by the carrier's Austin representative.

(e) After the carrier has paid an advance, it shall reduce the amount of the weekly income benefits in an amount set by the commission, which takes into account the amount advanced and the number of weeks that benefits are likely to be paid in

the future. The weekly benefits may be paid in this reduced amount until the carrier has recouped the amount advanced.

(f) The total amount of benefits paid to the employee through weekly payments and advances based on hardship shall not exceed the amount the employee would have received under a normal payment schedule. No more than three advances shall be granted based on the same injury.

§126.5. Procedure for Requesting Required Medical Examinations.

(a) The commission may authorize a medical examination for any reason set forth in the Act, §4.16, whether made by the carrier or a division of the commission, shall be made on a Form TWCC-22 approved by the commission, and shall be signed, and shall include the following information:

(1) the worker's compensation number assigned to the claim by the commission;

(2) the employee's name, address, and social security number;

(3) the date and nature of the injury;

(4) the employer's name and address;

(5) a statement that the carrier or a division of the commission attempted to seek the employee's concurrence and permission for the examination and failed;

(6) the name, business address, specialty certification, and telephone number of the doctor selected by the requestor who has agreed to conduct the examination and any reason supporting a change of the carrier's selected doctor;

(7) a statement that all examinations ordered must be scheduled as soon as possible with at least 10 days' notice to the claimant or his representative;

(8) the specific purposes of the examination;

(9) a statement that the requestor sent a copy of the request to the employee or the employee's representative;

(10) a statement that the carrier will pay reasonable expenses incident to the employee in submitting to such examination; and

(11) if the request is submitted by a carrier, a statement that the employee has not been examined by the carrier's choice of doctor within the last 180 days.

(b) The commission shall not require an employee to submit to a medical examination until the requestor has made an attempt to receive the permission and concurrence of the employee for the examination at a specific time and place.

(c) An insurance carrier's request for a medical examination order shall be delivered to the local commission office managing the claim, and be sent to the employee, or the employee's representative on the same day by certified mail. A carrier is entitled to only one required medical examination, under the Act, §4.16, every 180 days.

(d) The commission or the carrier may request an injured employee to submit to a medical examination to evaluate whether maximum medical improvement (MMI) has been reached.

§126.6. Order for Required Medical Examinations.

(a) When a request is made by the carrier, or a division of the commission, for a medical examination, the commission shall determine if an examination should be ordered. The commission shall issue an order granting or denying the request within seven days of the date the request is received by the commission. A copy of the order shall be sent to the employee, or the employee's representative, by certified mail, and by regular mail or personal delivery to the carrier. The order shall state the penalty cited in subsection (g) of this section. A written agreement between the parties for an examination under §126.5 of this title (relating to Procedure for Requesting Required Medical Examinations) has the same effect as the commission's formal order.

(b) All examinations ordered must be scheduled as soon as possible, with at least 10 days' notice to the claimant or his representative. If a scheduling conflict exists, the employee must contact the doctor to re-schedule the examination to a time within seven days of the examination. In this event, the examining doctor shall notify the carrier.

(c) The employee's doctor, chosen under the Act, §4.62, may be present at an examination scheduled according to subsection (b) of this section. The employee's doctor may observe the conduct of the examination, and may consult with the examining doctor about the course of the employee's treatment. The employee's doctor shall not otherwise participate in, or impede, the examination.

(d) An examining doctor who determines whether the employee has reached maximum medical improvement or who assigns an impairment rating shall complete and file the report as required by §130.1 and §130.3 of this title (relating to Reports of Medical Evaluation; Maximum Medical Improvement and Certification of Maximum Medical Improvement by Doctor Other Than Treating Doctor). Other reports shall be completed according to applicable rules for medical examination order reports in Chapter 133 of this title (relating to Medical Benefits-General Medical Provi-

sions), and shall be sent to the carrier, employee, and commission no later than seven days after the examination.

(e) The commission shall, if disputed, hold a benefit review conference within 30 days after receiving notification that the examining doctor has released the employee to return to work, and the carrier shall continue benefits pending the benefit review conference.

(f) A doctor who conducts an examination solely under the authority of an order issued according to this section shall not be considered a designated doctor under the Act, §4.25(b) or §4.26(g).

(g) An employee who, without good cause, fails or refuses to appear at the time scheduled for an examination authorized by this section may be assessed an administrative penalty not to exceed \$500 under the Act, §4.16.

(h) The commission shall order examinations requiring travel of up to 75 miles from the claimant's residence unless the treating doctor certifies that such travel may be harmful to the claimant's recovery.

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 January 9, 1991.

TRD-9100241

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: January 20, 1991

Proposal publication date: October 26, 1990

For further information, please call: (512)440-3973

Chapter 129. Income Benefits- Temporary Income Benefits

• 28 TAC §129.5

The Texas Workers' Compensation Commission adopts new §129.5, with changes to the proposed text as published in the October 26, 1990, issue of the issue of the *Texas Register* (15 TexReg 6177).

The new section is adopted to implement and clarify one of the temporary income benefit provisions, the Texas Workers' Compensation Act, Article 8308, §4.23(f). That section of the law concerns reduction of temporary income benefits when a bona fide offer of employment is made but refused to an injured employee.

New §129.5 is promulgated in order to describe the type of offer that will be considered to be a bona fide offer of employment under the Act, §4.23(f).

The section details the factors the commission will consider to determine if an offer of employment is bona fide, for purposes of determining if an employee's temporary income benefits should be reduced under the

Texas Workers' Compensation Act, §4.23(f). The section states the conditions under which a written offer will be presumed to be bona fide, and provides that if the offer is not in writing, the insurance carrier must provide clear and convincing evidence that a bona fide offer of employment was made. The section also states that an employment is geographically accessible if within a reasonable distance from the employee's residence, unless his physical condition precludes travel, as shown by medical evidence.

With regard to the new section, two commenters noted that subsection (b) should be modified to note that the offer should include a requirement that the position offered should clearly indicate the duties of the position and indicate an awareness of any medically-required restrictions on the injured employee that would affect ability to do the job. The commission agrees, and has amended subsection (b) by adding "clearly state the position offered, the duties of the position, that the employer is aware of and will abide by the physical limitations under which the employees or his treating physician have authorized the employee to return to work, the maximum physical requirements of the job, the wage, and the location of employment." after "presumed to be a bona fide offer, if the offer" and by deleting "the position offered, the physical requirements of the position, the wage, and the location of employment."

One commenter suggested deleting in subsection (b), the requirement that "clear and convincing" proof be offered of an unwritten job offer.

The commenter noted that there was not statutory requirement for this, and the proper standard should be "preponderance of the evidence." The commission disagrees, noting that it is within the authority of the commission to establish the standard of proof, and that the clear and convincing standard will encourage the use of written offers, to reduce conflict and dispute.

Finally, one commenter stated that the commission should create a presumption of a specific distance that would constitute a "reasonable distance." The commission disagrees, noting that the determination of reasonable distance should be based upon the facts of a particular case, and a presumption may work injustice in specific cases.

Texas Trial Lawyers Association, Texas Association of Business, and American Insurance Association commented against the proposed section. No comments specifically in favor of the proposed section were received.

The new sections are adopted under Texas Civil Statutes, Article 8308, §2. 09(a), which provide the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of this Act.

§129.5. Bona Fide Offers of Employment.

(a) In determining whether an offer of employment is bona fide, the commission shall consider the following:

(1) the expected duration of the offered position;

(2) the length of time the offer was kept open;

(3) the manner in which the offer was communicated to the employee;

(4) the physical requirements and accommodations of the position compared to the employee's physical capabilities; and

(5) the distance of the position from the employee's residence.

(b) A written offer of employment which was delivered to the employee during the period for which benefits are payable shall be presumed to be a bona fide offer, if the offer clearly states the position offered, the duties of the position, that the employer is aware of and will abide by the physical limitations under which the employee or his treating physician have authorized the employee to return to work, the maximum physical requirements of the job, the wage, and the location of employment. If the offer of employment was not made in writing, the insurance carrier shall be required to provide clear and convincing evidence that a bona fide offer was made.

(c) Employment is "geographically accessible" to the injured employee if it is within a reasonable distance from the employee's residence unless the employee establishes through medical evidence that the employee's physical condition precludes travel of that distance.

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 January 11, 1991.

TRD-9100375

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

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Proposal publication date: October 26, 1990

For further information, please call: (512) 440-3973

Chapter 133. Medical Benefits- General Medical Provisions

Subchapter C. Second Opinions for Spinal Surgery

• 28 TAC §§133.200-133.205

The Texas Workers' Compensation Commission adopts new §§133.200-133.205. Sections 133.200-133.204 are adopted with changes to the proposed text as published in the October 26, 1990, issue of the *Texas Register* (15 TexReg 6178). Section 133.205 is adopted without changes and will not be republished.

The new sections are adopted in order to implement the requirements of the Texas Workers' Compensation Act, Article 8308, and to set forth the procedural requirements

relating to obtaining, or waiving, second opinions for non-emergency spinal surgery.

New §133.200 sets forth the circumstances under which an insurance carrier is liable for the reasonable and necessary medical costs relating to spinal surgery required to treat a compensable injury. The section describes medical emergencies that will allow a carrier to pay for spinal surgery without a second opinion.

New §133.201 requires the treating doctor to make the recommendation for spinal surgery in a medical report in a form and manner prescribed by the commission, and to send it within 24 hours of the examination to the medical review division of the commission in Austin, with a copy sent to the carrier. The section specifies the additional information to be included on the medical report if the treating doctor recommends a second opinion doctor.

New §133.202 requires the insurance carrier to acknowledge receipt of the medical report and provides the method by which the carrier may waive a second opinion. The section also sets forth the procedure the carrier must follow to request a second opinion for spinal surgery, specifies the time frame for the examination, and sets out in detail the information to be included in the carrier's request.

New §133.203 provides that the injured employee may request approval for a second opinion for spinal surgery through the commission at the medical review division in Austin, whether or not the carrier has waived the right to the second opinion. The section requires the employee to notify the carrier at the same time of the request for approval of the commission. The section requires the carrier to pay the reasonable costs for the second opinion examination and report only if the second opinion doctor has been approved by the carrier or the commission.

New §133.204 requires the doctor rendering the second opinion on the recommendation for spinal surgery to telephone the commission's medical review division within 24 hours after the examination, and follow up with a written medical report within seven days of the examination. The section sets forth the information required to be included in the report.

New §133.205 provides for review of any medical dispute under the Act, §8. 26, when the treating doctor and the second opinion doctor do not agree on the need for spinal surgery.

Concerning proposed §133.200, one commenter suggested that paragraph (1) be modified to also include myelopathy, severe pain requiring injectible analysis and osteomyelitis or abscess as additional situations which would constitute an emergency. The commission disagrees, noting that severe pain is too subjective to constitute an emergency without further documentation and osteomyelitis or abscess would probably present with symptoms already listed in the rule.

Another commenter suggested that paragraph (1) be modified by adding a paragraph concerning spinal cord compression. The commission agrees and adds the language suggested, with modifications, as follows: "(D) spinal cord compression with diagnostically documented motor cord compression

and/or sensory findings of spinal cord compression."

One commenter suggested that paragraph (3) be modified by deleting the word "under" in the final sentence and replacing it with the word "in." The commission agrees and incorporates this grammatical change.

Another commenter suggested that paragraph (2) be modified by adding the language "from the medical review division, pursuant to §133.201(a)," after the word "notification." The commission agrees and adds the suggested language.

The Texas Medical Association, Texas Medical Association Special Advisory Committee on Physician Utilization, Capital Neurosurgical Association, Texas Association of Business, and American Insurance Association commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §133.201, one commenter suggested that subsection (a) be modified to allow a more reasonable period of time for the treating doctor to send the report to the medical review division. The commission agrees and changes the 24-hour requirement to 72 hours. The commenter also suggested that the information requirements in subsection (b) be kept as simple as possible. The commission agrees, noting that the information requirements have been kept as simple as possible.

Another commenter suggested that the commission should only be brought in to resolve a dispute. The commission disagrees, noting that even when no dispute exists, the commission has an interest in monitoring the process to avoid unnecessary surgery. The commenter suggested that subsection (b) be modified to require that the physician state the probable date that surgery should be performed, so that any time pressures on surgery will be apparent to the parties. The commission disagrees, noting that the date will be set by the surgeon and hospital after it is cleared by the carrier, either with or without a second opinion. Any emergency needs are dealt with in §133.200.

One commenter suggested that subsection (b) be modified by adding paragraph (7) to require that the recommending doctor send copies of other medical records. The commission agrees, and has referenced §133.2 of this title (relating to Sharing Medical Reports and Test Results) in subsection (b)(1).

The Texas Medical Association, Texas Trial Lawyers' Association, and Health Benefit Management commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §133.202, one commenter suggested that the commission should not involve itself in the second opinion procedure unless there is a dispute. The commission disagrees, noting that even when no dispute exists, the commission has an interest in monitoring the process to avoid unnecessary surgery. The commenter suggested that notification to the carrier by having the carrier sign for the medical report should not be the only way that a carrier is notified of a need for spinal surgery. The commission disagrees, noting that having the medical review division provide notice to the carrier allows the commission to know exactly

when the carrier's 14 days begin. The commenter suggested that subsection (d) be amended to provide that, absent good cause, the examination by the second opinion doctor should be concluded no later than 21 days after the carrier received notification of the recommendation. The commission disagrees, noting that the statute gives the carrier 14 days and other time frames in the rules provide incentive for the carrier to act promptly.

Another commenter suggested that subsection (b) be modified to clarify that the date which triggers the 14-day period is the "date on which the carrier's Austin representative receives notification from the medical review division under §133.201(a) of this title (relating to Required Medical Report: Spinal Surgery Recommendation)." The commission agrees with the suggestion, noting that the problem has been resolved previously. The commenter suggested that subsection (c) be modified by replacing the term "file" if the purpose is simply to provide a copy. The commission agrees and modifies the sentence to read: "The request for a second opinion shall be on a form prescribed by the commission and shall be provided to the medical review division of the commission in Austin, with a copy to...." The commenter suggested that subsection (g) be deleted as there is no statutory authority for limiting the carrier's flexibility to obtain second opinions. The commission disagrees, noting that the statute provides that the claimant must seek the opinion from a doctor approved by either the carrier or the commission and that the commission can therefore approve the doctor selected by the worker or can create a rule to allow for the carrier to make an alternate recommendation.

The commission also added a reference to the commission prescribed form in subsection (b), Form TWCC-63.

Texas Trial Lawyers' Association and American Insurance Association commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §133.203, one commenter suggested that subsection (b) be modified by adding the words "upon the basis of a standardized second opinion protocol for spinal surgery" after the words "The commission may." The commission disagrees, considering the suggested language to be unnecessary. The commenter suggested that subsection (c) be deleted as there is no authority to prohibit such appeals. The commission disagrees, noting that it is within the statutory authority of the commission to adopt the provision as the commission has the right to approve the second opinion doctor.

Another commenter suggested that subsection (c) be modified by clarifying who will make the decision. The commission disagrees, noting that it is clear from the context that the commission decision is to be made by the medical review division as provided in subsection (a). The commenter also suggested that subsection (c) be modified as there should be some mechanism for asking for reconsideration based on hardship or other grounds. The commission disagrees, noting that although the commission action may not be appealed, it is clear from the context that the commission may waive or modify its decision when appropriate.

In subsection (a) the commission replaces the phrase "at the same time" with the phrase "on the same day," for clarity and precision.

American Insurance Association and Health Benefit Management commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §133.204, one commenter suggested that subsection (a) be modified by deleting the clause "the doctor performing the surgery" and replacing it with the clause "the doctor expected to perform the surgery." The commission agrees and changes the language as suggested.

American Insurance Association commented against the rule. No comments were received specifically favoring the rule.

Concerning proposed §133.205, one commenter suggested that the rule be modified to provide that the commission automatically schedule a benefit review conference when the treating doctor and the second opinion doctor do not agree unless the parties waive the conference. The commission disagrees, noting that automatic setting would "block out" the docket that should be dedicated to live disputes. The commenter suggested that the burden should not be on the employee to request a review as this could work a hardship on unrepresented claimants who may be unfamiliar with the Act. The commission disagrees, noting that burdens are equally distributed in the rules and that it is not unreasonable to expect an employee who wishes to have surgery to request a review.

Another commenter suggested that a more satisfactory dispute resolution mechanism than that set forth in Article 8.26 would be the dispute resolution mechanism modeled on the "super-doc" approach set forth in Articles 4.25(b) and 4.26(g). The commission disagrees, noting that Article 8.26 provides for peer review of the need for recommended surgery; the dispute resolution mechanism in the statute is the appropriate forum for denial of payment of medical services requested.

Texas Trial Lawyers' Association and the American Insurance Association commented against the rule. No comments were received specifically favoring the rule.

The new sections are adopted under Civil Statutes, Article 8308, §2.09(a), which provide the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act, Article 8308; and Texas Civil Statutes, Article 8303, §4.67, which authorize the commission to make rules to ensure that a second opinion examination for spinal surgery is performed without undue delay.

§133.200. Carrier's Liability for Medical Costs of Spinal Surgery. The insurance carrier is liable for the reasonable and necessary medical costs relating to spinal surgery required to treat a compensable injury including the charges incurred for the rendering of the second opinion, when any one of the following situations occurs:

(1) there is a documented medical emergency relating to the spine, includ-

ing, but not limited to, the following conditions:

(A) an unstable vertebral fracture of such a critical nature that increased impairment may be caused without surgical intervention;

(B) bowel or bladder dysfunction that is diagnostically documented to be related to the spinal injury;

(C) severe or rapidly progressive neurological deficit that is diagnostically documented; or

(D) spinal cord compression with diagnostically documented motor cord compression and/or sensory findings of spinal cord compression;

(2) when a second opinion is waived or the carrier fails to request an examination within 14 days of receiving notification from the medical review division, pursuant to §133.201(a) of this title (relating to Required Medical Report: Spinal Surgery Recommendation), that the spinal surgery is recommended by the treating doctor; or

(3) The injured employee obtains a second opinion from a doctor approved by the insurance carrier or the commission (as provided by §133.202 of this title (relating to Carrier's of Waiver or Request for Second Opinion on Spinal Injury)), the examination for the second opinion is performed prior to the spinal surgery, and the second opinion concurs with the treating doctor's recommendation. This assessment shall be documented by the report required under §133.204 of this title (relating to Required Medical Report: Second Opinion on Spinal Surgery).

§133.201. Required Medical Report: Spinal Surgery Recommendation.

(a) The treating doctor shall recommend spinal surgery in a medical report in the form and manner prescribed by the commission. The report shall be sent within 72 hours after the examination to the medical review division of the commission at its office in Austin, with a copy sent to the carrier. The report to the commission may be sent by overnight express mail or by transmission of a facsimile. The medical review division will notify the carrier of the recommendation for spinal surgery by delivery of the required medical report to the carrier's Austin representative.

(b) The following information shall be included in the spinal surgery recommendation medical report submitted by the treating doctor:

(1) information required under §133.1 of this title (relating to Information Required in Communications) and §133.2

of this title (relating to Sharing Medical Reports and Test Results).

(2) history of any previous spinal surgeries, including the approximate date of each surgery and the procedure(s) performed;

(3) specific diagnosis(es) according to ICD-9-CM codes;

(4) recommended surgical procedure(s) and any additional diagnostic procedure(s) necessary prior to the surgery;

(5) the name(s), address(es), and professional license number(s) of the doctor(s) who will perform the recommended surgical procedure(s); and

(6) the treating doctor's reasons for recommending the surgical procedure(s).

(c) The treating doctor may recommend at least two doctors (if there are two in the geographical area) as choices for the carrier to approve for a second opinion evaluation for spinal surgery. No doctor recommended to perform the second opinion examination shall be the doctor listed in subsection (b)(5) of this section. If the treating doctor recommends a second opinion doctor, the following additional information shall be included on the medical report for each doctor:

(1) the recommended doctor's name, business address, and professional license number;

(2) an appointment date, if established, for the doctor to perform an examination of the injured employee; and

(3) a brief description of the medical specialty, that qualifies the doctor to render a second opinion on the recommendation for spinal surgery.

§133.202. Carrier's Waiver of or Request for Second Opinion on Spinal Surgery.

(a) The insurance carrier's Austin representative will acknowledge receipt of the medical report described in §133.201 of this title (relating to Required Medical Report: Spinal Surgery Recommendation) by signing for the report at the medical review division of the commission.

(b) At any time during the 14 days after receipt of the recommendation of spinal surgery, the carrier may agree in writing to waive a second opinion. The waiver shall be sent to the commission, the treating doctor, the doctor(s) performing the spinal surgery, and the injured employee or the injured employee's representative.

(c) A carrier who requests a second opinion for spinal surgery, must do so no later than the 14th day after receiving the notification of recommendation from the commission. The request for the second opinion shall be on a Form TWCC-63 prescribed by the commission, and shall be

provided to the medical review division in Austin, with a copy to the treating doctor, the doctor(s) performing the spinal surgery, and the injured employee or the injured employee's representative. For purposes of this section, the filing date will be the date received by the medical review division. The request may be sent by mail or by transmission of a facsimile.

(d) Absent good cause, the examination by the second opinion doctor shall be concluded no later than 30 days after the date that the carrier received notice of the recommendation for spinal surgery from the commission.

(e) The following information shall be included on the request:

(1) the injured employee's name, address, and social security number;

(2) the workers' compensation number assigned by the commission, if known;

(3) the date of injury;

(4) the insurance carrier's name and the signature of the person requesting the second opinion examination;

(5) the treating doctor's name and address;

(6) the name, address, and professional license number of the doctor approved by the carrier to render the second opinion for this recommended spinal surgery;

(7) the date and time of the second opinion examination, as arranged by the carrier;

(8) the following statement, in bold type: "The injured employee shall attend the second opinion examination without further approval or action by the commission. Absent an order from the commission, the carrier is required to pay for the reasonable medical costs of the spinal surgery only if the second opinion examination is performed and the second opinion concurs with the need for surgery."

(9) a brief description of the medical specialty, training, experience, or education that especially qualifies the doctor listed to render a second opinion on the recommendation for spinal surgery;

(10) the date the insurance carrier was notified of the recommendation for spinal surgery; and

(11) the date of this request.

(g) The carrier may approve one of the doctors recommended by the treating doctor or obtain approval from the commission for a doctor of the carrier's choice for the second opinion.

(h) The carrier shall pay the reasonable costs of the second opinion for the examination and for the report according to the guidelines established by the commission.

§133.203. Employee's Request for Commission Approval of Second Opinion.

(a) The injured employee may request approval for a second opinion for spinal surgery through the commission at the medical review division in Austin, whether or not the carrier has waived the right to the second opinion. The employee shall notify the carrier on the same day that the employee requests the approval of the commission.

(b) The commission may:

(1) approve a doctor to render the second opinion from those doctors recommended by the treating doctor; or

(2) approve another doctor to render the second opinion.

(c) Neither the carrier nor the employee can appeal the commission's action.

(d) The carrier's written concurrence with the employee's request for a second opinion examination is deemed to be the carrier's request for second opinion under the Texas Workers' Compensation Act, §4.67(a)(2).

(e) The carrier shall pay the reasonable costs of the second opinion and for the report according to the guidelines established by the commission, only if the second opinion doctor has been approved by the carrier or the commission.

§133.204. Required Medical report: Second Opinion on Spinal Surgery.

(a) The doctor rendering the second opinion on the recommendation for spinal surgery shall within 24 hours after the examination, contact by telephone the medical review division at Austin, to give the information required by this section. The doctor shall follow this telephone call with a written medical report within seven days of the examination. The report shall be sent to the commission, the carrier, the treating doctor, the doctor expected to perform the surgery, and the injured employee and representative.

(b) The following information shall be included on the report:

(1) general information required under §133.1 of this title (relating to Information Required in Communications);

(2) the treating doctor's name and address;

(3) the surgical procedure(s) and any additional diagnostic procedure(s) deemed necessary prior to the proposed surgery; and

(4) the doctor's opinion regarding the appropriateness of the spinal surgery. The opinion shall include reasons for agreement or disagreement with the original recommendations for surgery. If the doctor rendering the second opinion does not agree

with the need for surgery, treatment considered appropriate should be listed; and

(5) the medical specialty, training, experience, or education that especially qualifies the doctor to render the second opinion.

(c) The medical review division, after receiving the telephone call from the second opinion doctor, shall convey the doctor's opinion to the treating doctor.

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 January 14, 1991.

TRD-9100411

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: February 4, 1991

Proposal publication date: October 26, 1990

For further information, please call: (512) 440-3973

Chapter 160. Workers' Health and Safety-General Provisions

• 28 TAC §160.1

The Texas Workers' Compensation Commission adopts new §160.1, with changes to the proposed text as published in the October 26, 1990, issue of the *Texas Register* (15 TexReg 6180).

The new section is adopted in order to implement the employee reports of safety violations section of the Texas Workers' Compensation Act, Article 8308, and to clarify the form and content of the notice to employees and how the notice must be posted.

New §160.1 requires employers to post a notice in the workplace concerning safety violations in the workplace. The section sets out the language of the notice in English and in Spanish, indicates where the notice is required to be placed, how it is to be printed, and limits the language in the notice to that which is set out in the section. The section also requires the notice to be revised if the toll-free number set out in the notice changes.

Concerning §160.1, one commenter noted that the Spanish translation includes Spanish words in the brackets but other rules with translations have English in the brackets. The commenter suggested that all of the bracketed words be in English.

The bracketed language in the adopted rule only involves the toll-free number. The commission agrees and makes the suggested change.

One commenter suggested that the employee be required to inform the employer, in writing when possible, of safety violations prior to calling the toll-free telephone number and allow the employer reasonable time to correct the problem. The commission disagrees. The requirement would have a chilling effect on

the reporting of violations and the statute imposes no such requirement.

One commenter stated that the language of the notice suggests that an individual who reports a safety violation would be protected from any disciplinary actions regardless of the existence of other valid reasons. The commenter proposed replacing the word "who" with "because he or she". The commission agrees and makes the suggested change, to make clear that dismissal is wrong if it results from a safety-violation report.

One commenter suggested that the notice is not appropriate for a self-insured municipality and proposed combining notices and including their phone number along with the commission's on the notice. The commission disagrees. The rule already provides that it may be combined with the posted notice of coverage.

The commission replaced "[Name of Employer] is" with "employers are" to make clear that the prohibition applies to all employers.

Hammerman & Gainer, Texas Association of Business, American Insurance Association,

and City of Houston all commented against the rule. No comments specifically in favor of the rule were received.

The new sections are adopted under Article 8308, §2.09(a) which provides the Texas Workers' Compensation Commission with the authority to adopt rules as necessary for the implementation and enforcement of this Act.

§160.1. Employee Report of Safety Violations.

(a) Each employer shall post the following notice in the workplace:

NOTIFICACIÓN A EMPLEADOS

La Comisión de Compensación de Trabajadores de Tejas ha establecido una línea de teléfono (llamada gratis) de 24 horas para reportar condiciones inseguras en el sitio de trabajo que puedan violar las leyes de salud y seguridad ocupacional. Los patronos están prohibidos por ley a suspender, terminar, o ser discriminatorio en contra de cualquier empleado por que el o ella de buena fe reporta una alegada violación de salud y seguridad ocupacional. Comuníquese con la División de Salud y Seguridad del Trabajador Comisión de Compensación de Trabajadores de Tejas al 1-800-452-9595.

(b) The notice required by this section shall be:

- (1) prominently displayed in the employer's personnel office, if any;
- (2) located about the workplace in such a way that an employee is likely to see the notice on a regular basis;
- (3) printed in at least 24-point bold type; and
- (4) limited to the language required by this rule.

(c) The notice shall be revised if the toll-free number changes.

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 January 11, 1991.

TRD-9100374

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Effective date: February 2, 1991

Proposal publication date: October 26, 1990

For further information, please call: (512) 440-3973

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• **34 TAC §3.317**

The Comptroller of Public Accounts adopts an amendment to §3.317, without changes to the proposed text as published in the November 16, 1990, issue of the *Texas Register* (15 TexReg 6576).

The amendment added registered massage therapists to the list of exclusions from the definition of massage parlor.

No comments were received regarding adop-

tion of the amendment.

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

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 January 14, 1991.

TRD-9100383

Martin Cherry
Assistant General Counsel
Comptroller of Public
Accounts

Effective date: February 1, 1991

Proposal publication date: November 16, 1990

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 4. Medicaid Programs-Children and Pregnant Women

Eligibility Requirements

• 40 TAC §4.1004, §4.1006

The Texas Department of Human Services (DHS) adopts amendments to §4.1004 and §4.1006, concerning eligible groups and requirements for application. The DHS is adopting the amendments as a result of enactment of the Fiscal Year 1991 Budget Reconciliation Act approved by Congress on October 28, 1990, and signed by the president on November 5, 1990. This legislation extends Medicaid to children under the provision concerning newborns as long as the mother remains eligible for Medicaid or would be eligible if pregnant.

The justification for the amendments is to comply with federal requirements.

The sections will function by providing continuous Medicaid coverage to certain newborns through their first year of life.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical

assistance programs. The amendments are adopted under federal mandate to be effective January 1, 1991.

§4.1004. Eligible Groups. The programs serve the following groups of people:

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

(3) Newborn children born on or after October 1, 1984, if their mothers are receiving Medicaid coverage at the time of birth. This coverage can continue through the month:

(A) of the child's first birthday as long as the child remains in the mother's household and the mother remains Medicaid-eligible, or would be Medicaid-eligible if pregnant; or

(B) (No change.)

(4)-(5) (No change.)

§4.1006. Requirements for Application. To be eligible to apply for the CPW program, clients must meet the following requirements.

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

(3) Age and relationship. Eligible children must meet the age and relationship requirements outlined in the AFDC rules with the following exceptions.

(A) Medicaid coverage under the newborn children provision continues until the end of the month of the child's first birthday if:

(i) the child's mother continues to receive Medicaid, or the child's mother would continue to receive Medicaid if she were pregnant; and

(ii) (No change.)

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

(4)-(7) (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 January 10, 1991.

TRD-9100256

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

Effective date: January 1, 1991

Proposal publication date: N/A

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





Name: Amanda Langley

Grade: 4

School: Greenwood Hills Elementary, Richardson ISD

Open Meetings

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

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

Posting of open meeting notices. All notices are posted on the bulletin board 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*.

Texas Department on Aging

Thursday, January 24, 1991, 10:30 a.m. The Texas Board on Aging Task Force on Policies and Procedures will meet at the Texas Department on Aging, Small Conference Room, 1949 South IH-35, Third Floor, Austin. According to the complete agenda, the board will review policies and procedures of the Texas Board on Aging and state citizens advisory council.

Contact: Polly Sowell, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: January 10, 1991, 11:04 a.m.

TRD-9100267

Texas Department of Agriculture

Thursday-Friday, January 24-25, 1991, 9:30 a.m. The Texas Agricultural Diversification Program Board will meet at the Stephen F. Austin Building, Room 924A, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss and take action on grant awards for 1991; presentation on Texas-Israeli exchange program; discussion of diversification program budget and audit report; discussion on microenterprise program; discussion and action on microenterprise request-for-proposals, rules, and other documents; announcements and other business.

Contact: Jennifer Thompson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-7624.

Filed: January 11, 1991, 10 a.m.

TRD-9100328

Tuesday-Wednesday, February 12-13, 1991, noon and 8 a.m. respectively. The Texas Wheat Producers Board of the Texas Department of Agriculture will meet at the Harvey Hotel, 3100 I-40 West, Amarillo. According to the complete agenda, the board will discuss and act on research and development proposals; report from directors; meet in executive session to consult with attorney regarding potential litigation; review employee evaluations and salaries;

reconvene to take action, if any, resulting from executive session.

Contact: Bill Nelson, Suite 803, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352-2191.

Filed: January 11, 1991, 3:26 p.m.

TRD-9100372

Texas Air Control Board

Thursday, January 17, 1991, 1:30 p.m. The Mobile Source Emissions Committee of the Texas Air Control Board met at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee held a discussion of legislative budget board staff performance report regarding the vehicle inspection/maintenance program; and a discussion of proposed legislative changes to the Texas Clean Air Act to accommodate mobile source issues in the new amendments to the Federal Clean Air Act.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:06 a.m.

TRD-9100260

Thursday, January 17, 1991, 2:30 p.m. The Regulation Development Committee of the Texas Air Control Board met at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee discussed Federal Clean Air Act Title V requirements, impacts on state permitting program, and related legislative changes.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:06 a.m.

TRD-9100261

Thursday, January 17, 1991, 3:30 p.m. The Budget and Finance Committee and Fee Review Committee of the Texas Air Control Board met at 6330 Highway 290 East, Room 332, Austin. According to the

complete agenda, the committee held a discussion on toxics program funding, particularly the community monitoring component; discussion of proposed resolution for participation in the Texas Alliance for Minorities in Engineering (TAME); update on legislative budget board meeting concerning 1992-1993 biennium; and discussion of proposed fee legislation.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:07 a.m.

TRD-9100262

Friday, January 18, 1991, 8:30 a.m. The Enforcement Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will discuss proposed legislation regarding criminal penalties.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:07 a.m.

TRD-9100263

Friday, January 18, 1991, 9:30 a.m. The State and Federal Affairs Committee of the Texas Air Control Board will meet at 6330 Highway 290 East, Room 332, Austin. According to the complete agenda, the committee will hear update on legislative round table and other legislative activities and discussion of proposed changes to the Texas Clean Air Act.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:07 a.m.

TRD-9100264

Friday, January 18, 1991, 10:30 a.m. The Texas Air Control Board will meet at 6330 Highway 290 East, Auditorium, Austin. According to the complete agenda, the board will approve minutes of December 14, 1990 board meeting; hear public testimony; enforcement report and consideration of agreed enforcement orders; presentation of

certificates of appreciation: Sharon Blisard, Karen Olsen and Betty Rogers; consideration and action on budget recommendation; consideration and action on recommendation to participate in the Texas Alliance for Minorities in Engineering (TAME); committee meeting reports; and new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711 ext. 433.

Filed: January 10, 1991, 10:06 a.m.

TRD-9100259

Texas Department of Aviation

Thursday, January 17, 1991, 1:30 p.m.

The Texas Board of Aviation of the Texas Department of Aviation met at the Anson Jones State Building, Room 221, 410 East 5th Street, Austin. According to the complete emergency revised agenda, the board considered Arlington Municipal Airport-Total Share \$300,000; Federal Share \$270,000; and Local Share \$15,000. The emergency status was necessary because of an error on the original submission, Arlington was inadvertently left off.

Contact: Lydia Scarborough, 410 East 5th Street, Austin, Texas 78701, (512) 476-9262.

Filed: January 11, 1991, 3:32 p.m.

TRD-9100373

The State Bar of Texas

Friday, January 18, 1991, 2 p.m. The Executive Committee of the State Bar of Texas will meet at the Barton Creek Country Club-Austin Room, Austin. According to the agenda summary, the committee will hear report of chairman of the board-Richard C. Hile; report of president, James N. Parsons III; report of president-elect, Charles R. "Bob" Dunn; report of executive director-Karen R. Johnson; report on annual meeting budget-Tom Cunningham/Diana Corbin; report of general counsel advisory committee-Tom Cunningham; report from administrative advisory committee-Jerry Secrest; report of general counsel-Frank Douthitt/Steve Lee; report regarding proposed aviation law section-Charles F. Krause; report of immediate past president-Darrell Jordan; report of immediate past chairman of the board-Willis Gresham; report of TYLA president-Kirk Watson; report from supreme court liaison-Justice Raul Gonzalez.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: January 10, 1991, 4 p.m.

TRD-9100319

Saturday, January 19, 1991, 9 a.m. The Executive Committee/Supreme Court Workshop of the State Bar of Texas will meet at the Barton Creek Country Club-Austin Room, Austin. According to the agenda summary, the committee will discuss severance pay policy; accounting procedures report; disciplinary procedure update; sunset process report; bar budget report; discuss request of unauthorized practice of law section; consider effect of Texas rules of civil procedure on cost of legal services; discussion of pro bono activities; public service audit; staff committee update.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: January 10, 1991, 4 p.m.

TRD-9100320

Court Reporters Certification Board

Saturday, January 26, 1991, 9 a.m. The Court Reporters Certification Board will meet at 1414 Colorado, Suite 202, Austin. According to the complete agenda, the board will review the minutes from the October 27, 1990 meeting; conduct formal hearings in Cause Numbers 90084505 and 90112106; conduct preliminary reviews in Cause Numbers 90285207 and 91356601; discuss continuing education for court reporters; update on amending §52.021(e) of the Government Code; review financial disclosure statement of agency head for 1990; appoint board subcommittees; review year-to date expenses; and any other business that may come before the board.

Contact: Peg Liedkte, 3000 South IH-35, Suite 120, Austin, Texas 78704, (512) 463-1630.

Filed: January 14, 1991, 2:03 p.m.

TRD-9100449

Texas Commission for the Deaf

Monday, January 21, 1991, 3:30 p.m. The Camp Sign Advisory Committee of the Texas Commission for the Deaf will meet in the Conference Room, 1524, South IH-35, Suite 200, Austin. According to the complete agenda, the committee will discuss contract matters in an executive session in compliance with Texas Civil Statutes, Article 6252-17, §2(f) and the committee recommendations will be presented to the TCD board for final approval.

Contact: Larry D. Evans, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

TRD-9100277

Texas Education Agency

Tuesday-Wednesday, January 22-23, 1991, 3 p.m. and 8:30 a.m. respectively. The Advisory Committee of Technology Standards of the Texas Education Agency will meet at the Radisson Plaza Hotel at Austin Centre, 700 San Jacinto Boulevard, Austin; According to the agenda summary, the committee will hear the presentation of committee's charge; identification of problems and needs; direction of the committee (goals, objectives, task analysis); organize sub-committees to address specific technology standards (hardware, software, courseware, training, coordinators/specialists, and other related products and services); establish sub-committees (goals, objectives, task analysis, assignments, timeline); organize and compile conclusions of committee and subcommittees; establish future milestones and meeting dates.

Contact: Lane Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9087.

Filed: January 14, 1991, 9:37 a.m.

TRD-9100423

Monday, January 28, 1991, 8 a.m. The Academic Excellence Indicator Advisory Committee of the Texas Education Agency will meet at Room 2-115, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review and approve minutes; discussion of rating categories, outcomes, and comparison groups; reporting format; demographic variables for comparison groups; and closing activities.

Contact: Dr. Ruben D. Olivarez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9642.

Filed: January 14, 1991, 9:38 a.m.

TRD-9100425

Monday, January 28, 1991, 9 a.m. The School Facilities Advisory Committee of the Texas Education Agency will meet at Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will approve minutes of November 29, 1990 meeting; status report on building and educational technology assessment (BETA) project-data collection for legislative preview districts; preliminary report on standards development; and determine future meeting date(s).

Contact: Joe Wisnoski, Room 3-101, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9704.

Filed: January 14, 1991, 9:38 a.m.

TRD-9100426

Thursday, January 31, 1991, 3 p.m. The Computer Software Advisory Committee of the Texas Education Agency will meet at the Radisson Plaza Hotel at Austin Centre,

the Texas Education Agency will meet at the Radisson Plaza Hotel at Austin Centre, 700 San Jacinto Boulevard, Austin. According to the agenda summary, the committee will hear an overview of the committee's charge (Texas Education Code, Chapter 14, §14.004); history of the computer software advisory committee; current status of the committee; discussion of problems and needs identified by committee members from the software advisory committee information survey, summer 1990; direction of the committee (goals, objectives, task analysis); formation of sub-committees to address software needs/problems; direction of sub-committees (goals, objectives, task analysis, assignments, timeline); summary of responsibilities of software advisory committee and sub-committees; discussion of future milestones and meeting dates.

Contact: Karen Kahan, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9087.

Filed: January 14, 1991, 9:37 a.m.

TRD-9100424

◆ ◆ ◆ Advisory Commission on State Emergency Commu- nications

Tuesday, January 22, 1991, 9:30 a.m. The Resource Committee of the Addressing Subcommittee of the Advisory Commission on State Emergency Communications will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the committee will hold a discussion of addressing standard recommendation; hear public comment; and consider new business.

Contact: Darla Parker, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:19 p.m.

TRD-9100370

Tuesday, January 22, 1991, 1:30 p.m. The Addressing Advisory Subcommittee of the Advisory Commission on State Emergency Communications will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the subcommittee will hear status report from resource committee; hear public comment and consider new business.

Contact: Darla Parker, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:20 p.m.

TRD-9100371

Wednesday, January 23, 1991, 9:30 a.m. The Planning and Implementation Committee of the Advisory Commission on State

Emergency Communications will meet at the Texas Department of Human Services, Room 125G, 701 West 51st Street 78751, 1100 West 49th Street, Austin. According to the complete agenda, the committee will hear public comment; discussion and consideration of various plan amendments; report on the progress of the 1991 regional plan review process; discussion and consideration of policy for plan amendment process; discuss and consider recommendations from the report of the policy subcommittee on 9-1-1 system upgrades; report on the Public Utility Commission's approval of Southwestern Bell Telephone Company Docket Number 8585; report on GTE Southwest Tariff, Docket Number 9667; report on the Telecommunications Service Priority (TSP) program and the potential 9-1-1 financial impact; and consider any new business.

Contact: Glenn Roach, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:50 p.m.

TRD-9100378

Wednesday, January 23, 1991, 10 a.m. The Administration Committee of the Advisory Commission on State Emergency Communications will meet at the Texas Department of Human Services, Corner Room of 125E, Austin. According to the complete agenda, the committee will hear public comment; hear ACSEC financial report; hear state auditor's report on ACSEC audit; hear report on request for proposals for auditing firms and consider acceptance of staff recommended finalists; consideration of approval of policy subcommittee report; hear progress report on addressing advisory subcommittee; hear report on highway department grant award to the addressing program; and consider any new business.

Contact: Glenn Roach, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:50 p.m.

TRD-9100379

Wednesday, January 23, 1991, 10 a.m. The Public Education and Training Committee of the Advisory Commission on State Emergency Communications will meet at the Texas Department of Human Services, Room 103W, Austin. According to the complete agenda, the committee will hear public comment; report on public education materials survey results and consideration of funding and distribution recommendations; report on the handbook for developing 9-1-1 public education programs; report on the 1991 national emergency number association (NENA) conference; and consider any new business.

Contact: Glenn Roach, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:49 p.m.

TRD-9100377

Wednesday, January 23, 1991, 1:15 p.m. The Advisory Commission on State Emergency Communications will meet at the Texas Department of Human Services, Room 125E, Austin. According to the agenda summary, the committee will hear public comment; hear committee reports; discuss and consider any action items; consider any new business and consider approval of previous meeting minutes.

Contact: Glenn Roach, ACSEC 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 11, 1991, 3:49 p.m.

TRD-9100376

◆ ◆ ◆ Employees Retirement Sys- tem of Texas

Wednesday, January 23, 1991, 1:30 p.m. The Board of Trustees ERS Organization and Compensation Committee of the Employees Retirement System of Texas will meet at the ERS Board Room, Room 401, ERS Building, 18th and Brazos, Austin. According to the complete agenda, the committee will discuss the process regarding the appeal of contested cases; report on computer hardware alternatives to support the integrated redesign project; update of the November 1988 ERS management audit; and set future meeting dates.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: January 15, 1991, 9:46 a.m.

TRD-9100484

◆ ◆ ◆ Texas Employment Commis- sion

Tuesday, January 22, 1991, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; meet in executive session to discuss pre-litigation settlement of tax liability dispute regarding Relief Services, Inc. and Bonnie Wences v. TEC and Dobbs House, Inc.; reconvene to discuss actions, if any, resulting from executive session; internal procedures of commission appeals; consideration and action of higher level appeals in unemployment compensation cases listed on Commission Docket 4; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 14, 1991, 4:13 p.m.

TRD-9100473

Texas State Board of Registration for Professional Engineers

Wednesday-Thursday, January 23-24, 1991, 8:30 a.m. The Texas State Board of Registration for Professional Engineers will meet at 1917 IH-35 South, Board Room, Austin. According to the agenda summary, the board will receive reports from board members and staff; interview applicants; take action on applications for registration; reading of communications; and other related business in accordance with agenda.

Contact: Charles E. Nemir, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: January 11, 1991, 1:54 p.m.

TRD-9100349

Texas Department of Health

Tuesday, January 22, 1991, 4:30 p.m. The Environmental Health Committee of the Board of Health of the Texas Department of Health will meet at the Doubletree Hotel, 6th Floor Conference Room, 6505 IH-35, North, Austin. According to the complete agenda, the committee will discuss legislative mandates for environmental health programs; target times for department action; and environmental health budget.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 14, 1991, 3:46 p.m.

TRD-9100462

Tuesday, January 29, 1991, 10:30 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet at 1212 East Anderson Lane, Austin. According to the complete agenda, the board will consider and possibly act on mission and plan of action.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 835-7000.

Filed: January 14, 1991, 2:01 p.m.

TRD-9100447

Texas Historical Commission

Friday, January 25, 1991, 8:30 a.m. The National Register Programs Committee of the Texas Historical Commission will meet at El Rose Apartments Building, 2nd Floor, 108 West 16th Street, Austin. According to the agenda summary, the committee will make announcements; approval of FY 1991 certified local government grants; update on Texas and Pacific Depot in Marshall; update on federal lighthouse grant; and quarterly report of activities.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: January 11, 1991, 9:33 a.m.

TRD-9100327

Texas Historical Records Advisory Board

Friday, February 22, 1991, 10 a.m. The Texas Historical Records Advisory Board will meet at the Lorenzo de Zavala State Archives and Library Building, 1201 Brazos Street, Room 205, Austin. According to the complete agenda, the board will review and discuss grant proposals prior to making final funding recommendations to the National Historical Publications and Records Commission.

Contact: Chris LaPlante, 1201 Brazos Street, Austin, Texas 78701, (512) 463-5480.

TRD-9100332

Texas Department of Human Services

Wednesday, January 16, 1991, 8 a.m. The Texas Board of Human Services of the Texas Department of Human Services held an emergency meeting at 701 West 51st Street, 1st Floor, East Tower, Public Hearing Room, Austin. According to the emergency revised agenda summary, the board discussed emergency appropriation request for state fiscal year 1991. The emergency revised agenda was necessary so that an emergency appropriation request for state fiscal year 1991 may be submitted at the earliest possible time for consideration by the 72nd legislature so as to ensure the continuation of vital human services.

Contact: Bill Woods, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3047.

Filed: January 10, 1991, 4:21 p.m.

TRD-9100321

Department of Information Resources

Friday, January 25, 1991, 9 a.m. The Board of the Department of Information Resources will meet at One Capitol Square, Suite 1300, 300 West 15th Street, Austin. According to the complete agenda, the board will approve meeting minutes; hear executive director's report; division reports; financial reports through December 31, 1990; December parity report; discussion and adoption of the proposed rules for specification review; meet in executive session to consider legislative issues; discussion and adoption of DIR's initial operating plan; presentation of satellite feasibility re-

port; other business; and public testimony.

Contact: Debra K. Wilson, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 371-1120.

Filed: January 14, 1991, 3:49 p.m.

TRD-9100469

State Board of Insurance

Tuesday, January 22, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Old Western Life Insurance Company, Columbia, Missouri, to acquire control of Independent State Life Insurance Company, DeSoto, Texas, pursuant to the Insurance Code, Article 21.49-1 §5. Docket Number 11096.

Contact: Will McCann, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:30 p.m.

TRD-9100474

Wednesday, January 23, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Raynaldo Mendez, Austin, Texas for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11052.

Contact: James W. Norman, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100475

Wednesday, January 23, 1991, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Newco N.V. i.o. to acquire control of Southland Life Insurance Company pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5. Docket Number 11099.

Contact: Earl Corbitt, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100476

Wednesday, January 23, 1991, 2:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room

414, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of N.V. i.o. to acquire control of Southern Fidelity Insurance Company pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5. Docket Number 11100.

Contact: Earl Corbitt, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100477

Friday, January 25, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Joseph P. Zito, Fountain Hills, Arizona, who hold a Group I, Legal Reserve Life Insurance Agent's license issued by the State Board of Insurance. Docket Number 11069.

Contact: Wendy L. Ingham, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100478

Friday, January 25, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the request of Whitehall Exec, Inc., Dallas, to withdraw deposit held by State Treasurer pursuant to the Insurance Code, Article 21.07-1, §4(e)(3). Docket Number 11097.

Contact: Will McCann, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100479

Monday, January 28, 1991, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Ronald Gene Morgan, Plano, who hold a Group I, Legal Reserve Life Insurance Agent's license issued by the State Board of Insurance. Docket Number 11077.

Contact: Lisa Lyons, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:31 p.m.

TRD-9100480

Monday, January 28, 1991, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application for amendment to the Articles of Incorporation of United Group Insurance Company, Irving, changing the home office and increasing the par value of common stock. Docket Number 11098.

Contact: James W. Norman, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 14, 1991, 4:32 p.m.

TRD-9100481

Wednesday, January 30, 1991, 9 a.m. The State Board of Insurance will meet in Room 460, State Insurance Building, 1110 San Jacinto Boulevard, Austin. According to the complete agenda, the board will conduct a public hearing to consider adoption of 28 TAC §§19.1201-19.1205, concerning regulation of the activities of managing general agents.

Contact: Pat Wagner, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 11, 1991, 4:17 p.m.

TRD-9100389

Lamar University System

Thursday, January 17, 1991, 3 p.m. The Liaison Committee of the Board of Regents of the Lamar University System met at 1520 Procter Street, Monroe Building, Room 206, Port Arthur. According to the complete agenda, the committee heard chairman's remarks, discussed taking care of Maribeau B's land; and open forum.

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

Filed: January 11, 1991, 1:55 p.m.

TRD-9100350

Texas Commission on Law Enforcement Officer Standards and Education

Thursday, January 24, 1991, 9:30 a.m. The Funding Subcommittee of the Texas Peace Officers' Memorial Advisory Committee will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the complete agenda, the subcommittee will approve minutes of the November 8, 1990 meeting; funding strategies-discussion and action; and staff report.

Contact: James Ball, 1033 La Posada, Suite 175, Austin, Texas 78752, (512) 450-0188.

TRD-9100300

Texas National Research Laboratory Commission

Wednesday, January 16, 1991, 10:30 a.m. The Texas National Research Laboratory Commission held an emergency meeting rescheduled from 9:30 a. m. January 16, 1991, at Dallas Love Field, South West Airlines Offices, University for People, Training Room II, According to the emergency revised agenda summary, the commission may approve minutes of December 19, 1990; meet in executive session to discuss land acquisition; reconvene to hear budget and finance committee report-Peter O'Donnell, Jr.; land acquisition committee report-Charles R. Perry; authorization to proceed with eminent domain (condemnation); resolution to approve SDHPT Minute Order 91034; other commission business: resolution to approve contract for accounting services; and resolution to approve national education efforts. The emergency status was necessary because the originally posted time did not allow a quorum to convene and several parcels had been removed from the list recommended for condemnation.

Contact: Karen Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3811.

Filed: January 11, 1991, 11:54 a.m.

TRD-9100336

State Preservation Board

Thursday, January 10, 1991, 2 p.m. The State Preservation Board met at the Lieutenant Governor's Committee Room, Capitol Building, Austin. According to the emergency revised agenda summary, the board may have approved minutes; discussed old or unfinished business; new business: loan request from LBJ School of Public Affairs, University of Texas at Austin, General Land Office Building, and Texas Capitol project. The emergency status was necessary because the agenda was not finalized in order to meet the regular filing deadline.

Contact: Cynthia Alexander, 201 East 14th Street, Austin, Texas 78711, (512) 463-5495.

Filed: January 10, 1991, 12:53 p.m.

TRD-9100272

Texas State Board of Examiners of Psychologists

Tuesday-Friday, January 22-25, 1991 at 8 a.m. The Texas State Board of Examiners of Psychologists will meet at 9101 Burnet Road, Suite 212, Austin. According to the complete agenda, the board will consider applications, complaints, proposed rules, budget, legislative matters, minutes, opinion letters, exam issues, reports, and planning issues.

Contact: Patricia S. Bizzell, 9101 Burnet Road, Austin, Texas 78758, (512) 835-2036.

Filed: January 14, 1991, 10:50 a.m.

TRD-9100431

Public Utility Commission of Texas

Wednesday, January 23, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 9884, Application for commission approval of an agreement for the purchase and sale of electricity between Southwestern Public Service Company and Sid Richardson Carbon and Gasoline Company.

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

Filed: January 14, 1991, 3:34 p.m.

TRD-9100459

Thursday, January 24, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 9916, Application of Southwestern Bell Telephone Company to revise tariff to no longer offer intra lata foreign exchange service from central office NXX codes that provided extended metropolitan service.

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

Filed: January 14, 1991, 3:33 p.m.

TRD-9100457

Monday, January 28, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 6106/7205: Petition of AT&T Communications of the Southwest, Inc., for emergency and other relief con-

cerning access charges; petition of general counsel for an inquiry into a flat rate plan for access charges.

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

Filed: January 11, 1991, 3:03 p.m.

TRD-9100367

Monday, March 11, 1991, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9633, application of Central Telephone Company of Texas to revise meet point billing for feature Group B (FGB).

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

TRD-9100366

Monday, April 22, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a hearing on the merits for Docket Number 9916-application of Southwestern Bell Telephone Company to revise tariff to no longer offer intra lata foreign exchange service from central office NXX codes that provide extended metropolitan service.

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

Filed: January 14, 1991, 3:33 p.m.

TRD-9100458

Railroad Commission of Texas

Monday, January 14, 1991, 9 a.m. The Railroad Commission of Texas held an emergency meeting at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission met to consider application of Amsco Transportation, Inc. to establish a fuel adjustment charge item of OHFA Tariff 101-F to reflect fuel cost above base rate; and consideration of interim order approving. The emergency status was necessary because of an urgent public necessity existing due to the recent dramatic fuel cost increases experienced by the motor carriers. Such a reasonably unforeseeable situation required immediate action by the commission.

Contact: Harold Bartz, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7104.

Filed: January 11, 1991, 11:27 a.m.

TRD-9100335

Monday, January 14, 1991, 9 a.m. The Railroad Commission of Texas held an emergency meeting at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission met to consider acceptance of a revised bond map for the surface mining coal operations of Texas Municipal Power Agency under Permit Number 26 in Grimes County. The map represents areas within the permit boundary where operations are authorized. The emergency status was necessary because of unforeseen geologic faulting having increased pit inflow and resulted in sloughing and water conditions which have limited the supply of coal to less than one day of fuel at the power plant. An imminent threat to the electric power supply base of Bryan, Denton, Garland and Greenville exists due to the power generation reduction and potential power demand creating an unforeseeable and imminent threat to the public health and safety.

Contact: Ron Reeves, P.O. Box 12967, Austin, Texas 78711, (512) 463-6841.

TRD-9100334

Monday, January 14, 1991, 9 a.m. The Railroad Commission of Texas held an emergency meeting at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission met to consider approval of a revised mine plan and acceptance of a revised bond map for the surface mining coal operations of Texas Municipal Agency under Permit Number 26 in Grimes County. The map represents areas within the permit boundary where operations are authorized. The emergency status was necessary because of unforeseen geologic faulting having increased pit inflow and resulted in sloughing and water conditions which have limited the supply of coal to less than one day of fuel at the power plant. An imminent threat to the electric power supply base of Bryan, Denton, Garland and Greenville exists due to the power generation reduction and potential power demands creating an unforeseeable and imminent threat to the public health and safety.

Contact: Ron Reeves, P.O. Box 12967, Austin, Texas 78711, (512) 463-6841.

Filed: January 11, 1991, 11:26 a.m.

TRD-9100390

State Securities Board

Tuesday, January 22, 1991, 9:15 a.m. The State Securities Board will meet at the Stephen F. Austin Building, Room 618,

1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of October 11, 1990, board meeting; discussed published proposals to amend §109.3(b); create new §113.13 concerning registration requirements for multijurisdictional disclosure system offerings; amend §115.2; amend §115.3; amend Chapter 123; amend §135.3; and create new §139.4 concerning a new exemption for SEC Rule 114A resales; new rule proposals to create new §109.5 concerning sales pursuant to The Securities Act, §5.C(a); amend Chapter 117; amend §137.1; and create new §139.11 concerning a new exemption for certain credit enhancements; new business items for subsequent meetings; and update with reports from division directors and securities commissioner.

Contact: Richard D. Latham, 1800 San Jacinto Boulevard, Austin, Texas 78711, (512) 474-2233.

Filed: January 14, 1991, 3:25 p.m.

TRD-9100456

Texas Southern University

Thursday, January 24, 1991, 5:30 p.m. The Academic Affairs and Personnel Committees of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee and board will consider report on progress of academic activities and programs; and personnel actions.

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

Filed: January 14, 1991, 9 a.m.

TRD-9100412

Monday, January 28, 1991, 4 p.m. The Finance Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee will consider matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments, and informational items.

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

Filed: January 14, 1991, 9:02 a.m.

TRD-9100415

Teacher Retirement System of Texas

Tuesday, January 15, 1991, 9 a.m. The Board of Trustees Executive Search Committee of the Teacher Retirement System of

Texas held an emergency meeting at Tarrant County Junior College, Northeast Campus, 828 Harwood Road, Hurst. According to the complete agenda, the committee heard presentation of proposals by executive search firms for the executive secretary and chief investment officer positions. The emergency status was necessary because work had to begin immediately on the selection process.

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701, (512) 397-6400.

Filed: January 11, 1991, 4:05 p.m.

TRD-9100381

Monday, January 21, 1991, 9 a.m. The Board of Trustees Executive Search Committee will meet at the Hyatt DFW, East Tower, DFW Regional Airport, DFW Airport, Dallas-Fort Worth. According to the complete agenda, the committee will hear presentation of proposals by executive search firms for the executive secretary and chief investment officer positions; and recommendation of selection of executive search firms for the executive secretary and chief investment officer positions.

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701, (512) 397-6400.

Filed: January 11, 1991, 4:06 p.m.

TRD-9100382

Wednesday, January 23, 1991, 2 p.m. The Board of Regents of Texas State Technical Institute will meet at the Marriott at the Capitol, 701 East 11th Street, Tannehill Room, Austin. According to the agenda summary, the board will discuss and review the following TSTI policy committee minute orders and reports: policy committees for instruction and student services, facilities, fiscal affairs, and human resources and development; special ad hoc committee for construction; and chancellor's recommendations and reports (committee of the whole).

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 876-4890.

Filed: January 14, 1991, 3:44 p.m.

TRD-9100460

Thursday, January 24, 1991, 9 a.m. The Board of Regents of Texas State Technical Institute will meet at the Marriott at the Capitol, 701 East 11th Street, Barton Room, Austin. According to the agenda summary, the board will approve minute orders; classes meeting with less than ten students, requests for budget change, authorization to purchase general liability insurance coverage, ground lease agreement with Chrysler Technology Systems for additional space at the Waco airport, extended ground lease term with Chrysler Technologies Airborne

System at TSTI-Waco, lease agreement with MET for office space at TSTI-Waco, lease agreement with Chrysler Technology for building 6-3 at TSTI-Waco, lease agreement with Elsinore Airframe Services for parking aircraft at TSTI-Waco, extended lease term for building 11-1 to Elsinore Airframe at TSTI-Waco, Aerospace Technology Center construction funding at TSTI-Waco, sale of excess property at TSTI-Harlingen, lease agreement with Cleanco Enterprises at TSTI-Amarillo, lease agreement with Pioneer Chemical, Inc. at TSTI-Amarillo, adoption of resolution creating a joining airport zoning board at TSTI-Waco, appointment of members to the airport zoning board, ground lease with Century Development Corporation for student housing construction at TSTI-Waco, TU electric substation relocation at TSTI-Waco, grant application for federal aviation administration and department of aviation funding for runway overlay at TSTI-Waco Airport, abandonment of Maehr Road at Waco, select an engineering firm to develop plan and specification for HVAC upgrades of the Learning Resource Center and Technology Office Training at TSTI-Harlingen, take bids for HVAC updates at TSTI-Harlingen, approval of plans and specification for the construction of engineering graphics building at TSTI-Harlingen, accept bids for construction of engineering graphics building at TSTI-Harlingen, award a contract for renovation at TSTI-Amarillo, grant application for applied technology education building at TSTI-Sweetwater, policy or overtime, resolution for Dean Mayberry, and resolution for George Young; meet in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2 subsection (f) and (g) to discuss matters relating to personnel at TSTI and litigations.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 876-4890.

Filed: January 14, 1991, 3:45 p.m.

TRD-9100461

Texas Tech University

Friday, January 18, 1991, 10:30 a.m. The Finance Committee of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; consider budget adjustments for period of October 1 to November 30, 1990; award fire, lightning, and extended coverage insurance policy on buildings and contents; approval of electric service agreement with Lubbock Power and Light pertaining to back pressure cogeneration turbine in central heating and cooling plant I; amend Proctor ranch oil and gas lease; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:57 a.m.

TRD-9100287

Friday, January 18, 1991, 10:30 a.m. The Campus and Building Committee of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; amend construction contract for Phase I of physical plant renovation; receive bids for renovation of serving lines and handicapped access for Wall/Gates Halls dining room; accept proposal for installation of cable television service to residence halls; planning for Wall/Gates and Hulen Clement Halls parking lot expansion; appoint project engineer for installation of softball field lighting; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:58 a.m.

TRD-9100288

Friday, January 18, 1991, 10:30 a.m. The Development and Public Affairs Committee of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:58 a.m.

TRD-9100289

Friday, January 18, 1991, 10:30 a.m. The Research Affairs Committee of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:58 a.m.

TRD-9100290

Friday, January 18, 1991, 10:30 a.m. The Committee of the Whole of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will consider revision of board policy 01.01, rules and regulations of the board of regents, meet in executive session to consult with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations and matter confidential pursuant to Code of Professional Responsibility of the

state bar of Texas; reconvene to discuss prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:59 a.m.

TRD-9100291

Friday, January 18, 1991, 10:30 a.m. The Academic, Student, and Administrative Affairs Committee of the Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; consider appointment of individuals to board of directors of research foundation; ratify leaves of absence, establish institute for multicomputer processing and controls, and commissioning of peace officers; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:57 a.m.

TRD-9100286

Saturday, January 19, 1991, 9 a.m. The Board of Regents of Texas Tech University will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the board will hear report and take action on minutes, presidents report, academic, student and administrative affairs, finance, campus and building, development and public affairs, and committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 11:57 a.m.

TRD-9100285

Texas Tech University Health Sciences Center

Friday, January 18, 1991, 10:30 a.m. The Committee of the Whole of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will consider revision of board policy 01.01, rules and regulations of the board of regents; meet in executive session to consult with president and general counsel regarding pending and contemplated litigation, settlement officers, settlement negotiations and matters confidential pursuant to code of

professional responsibility of state bar of Texas; reconvene to discuss prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2:02 p.m.

TRD-9100298

Friday, January 18, 1991, 10:30 a.m. The Research Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2:02 p.m.

TRD-9100297

Friday, January 18, 1991, 10:30 a.m. The Development and Public Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2:01 p.m.

TRD-9100296

Friday, January 18, 1991, 10:30 a.m. The Campus and Building Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; consider and ratify completion date for construction of phase II, Odessa Regional Academic Health Center; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2 p.m.

TRD-9100295

Friday, January 18, 1991, 10:30 a.m. The Finance Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; consider budget ad-

justments for period of November to November 30, 1990; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2 p.m.

TRD-9100294

Friday, January 18, 1991, 10:30 a.m. The Academic, Student, Clinical and Administrative Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will approve minutes of November 2, 1990; consider revision of mission statement; affiliation agreements with University Hospital, Albuquerque; healthfocus of San Antonio for occupational therapy student clinical education training facilities and with Cuero Community Hospital; Parmer County Community Hospital (Friona), Lynn County Hospital (Tahoka), and Yoakum County Hospital (Denver City) to provide continuing health care education programs; master coordinating agreement with Amarillo Hospital District for funding of resident services; ratify commissioning of peace officer; and reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 2 p.m.

TRD-9100293

Saturday, January 19, 1991, 9:55 a.m. The Board of Regents of Texas Tech University Health Sciences Center will meet at Texas Tech Regional Academic Health Center, 800 West 4th Street, Odessa. According to the complete agenda, the committee will report and act on: minutes; academic, student, clinical and administrative affairs, finance, campus and building, development and public affairs, and committee of the whole.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79509, (806) 742-2161.

Filed: January 10, 1991, 1:59 p.m.

TRD-9100292

Texas Water Commission

Tuesday, January 22, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including, but not limited to,

scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 14, 1991, 3:47 p.m.

TRD-9100463

Thursday, January 24, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 123, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider the executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 14, 1991, 3:48 p.m.

TRD-9100465

Thursday, January 24, 1991, 1:30 p.m. The Texas Water Commission will meet at Town Lake Center, First Floor, Assembly Room, 721 Barton Springs Road, (city's electric utility building), Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Gloria Barrera, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 14, 1991, 3:47 p.m.

TRD-9100464

Friday, February 8, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing to discuss Progreso Water Supply Corporation which has applied to the Texas Water Commission for a Water Certificate of Convenience and Necessity to allow it to provide water utility service in Hidalgo County. Docket Number 8526-C.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:34 p.m.

TRD-9100305

Monday, February 11, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1149A, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a

hearing to discuss Peach Creek Dam and Lake Club, Inc. which has applied to the Texas Water Commission for a Water Certificate of Convenience and Necessity to allow it to provide water utility service in Montgomery County, and to decertify a portion of the City of Patton Village CNN Number 11193. The proposed service area is approximately one mile west of downtown Patton Village, and generally bounded on the north by U.S. Highway 59, on the south by Peach Creek, on the east by Patton Village, and on the west by the U.S. Highway 59. The total area being requested includes approximately 160 acres and 75 current customers. Docket Number 8655-C.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:35 p.m.

TRD-9100307

Thursday, February 14, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 618, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing to discuss Lake Forest Water System, Inc. which has applied to the Texas Water Commission for a Water Certificate of Convenience and Necessity to allow it to provide water utility service in Tarrant County. Docket Number 8633-C.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:36 p.m.

TRD-9100308

Thursday, February 14, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 543, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing to discuss the City of Celina which has applied to the Texas Water Commission for Water and Sewer Certificates of Convenience and Necessity to allow it to provide water and sewer utility service in Collin County. Docket Numbers 8650-C and 8651-C.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:35 p.m.

TRD-9100306

Monday, February 18, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1028A, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing to discuss Radiance Water Supply Corporation which has applied to the Texas Water Commission for a Certificate of Convenience and Necessity to allow it to pro-

vide water utility service in Hays County. Docket Number 8674-C.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:34 p.m.

TRD-9100304

Tuesday, February 19, 1991, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 543, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an assessment of civil penalties and requiring certain actions of Angelina County. Angelina County owns property that is leased to Aero Aviation for use as an aircraft painting facility. The property is located at the Angelina County Airport which is approximately one-half mile east of U. S. Highway 59 and approximately four miles north of Diboll, Angelina County.

Contact: James Murphy III, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 14, 1991, 3:49 p.m.

TRD-9100470

Tuesday, February 19, 1991, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 543, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an assessment of civil penalties and requiring certain actions of Aero Aviation, Inc., SWR-39807. Aero Aviation, Inc. operates an aircraft painting facility located in a converted airplane hanger at the Angelina County Airport, four miles north of the City of Diboll in Angelina County.

Contact: James Murphy III, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 14, 1991, 3:49 p.m.

TRD-9100468

Friday, February 22, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing on rate increase of Shadowood Water Company, Docket Number 8554-G.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:38 p.m.

TRD-9100312

Wednesday, February 27, 1991, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 1111A, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will discuss consideration on assessment of civil penalties and

requiring certain actions Voda Petroleum Inc., SWR 32231. Voda Petroleum, Inc. operates a waste oil recycling facility which is located at 209 Duncan Road in Clarksville City, Gregg County.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 14, 1991, 3:49 p.m.

TRD-9100471

Monday, February 25, 1991, 10 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 543, 1700 North Congress Avenue, Austin. According to the agenda summary, the hearing examiners will conduct a hearing to discuss Chalk Hill Water Supply Corporation which has applied to the Texas Water Commission for an amendment to Water Certificate of Convenience and Necessity Number 11746 to allow it to expand the area which it provides water utility service in Rusk County. Docket Number 8576-C.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:33 p.m.

TRD-9100303

Tuesday, February 26, 1991, 9 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet at Galveston City Hall, Counsel Chambers, 823 Rosenberg, Galveston. According to the agenda summary, the hearing examiners will conduct a hearing to discuss application by McGinnes Industrial Maintenance Corporation for renewal of Permit Number 01221 which authorizes a discharge of sludge supernatant into the Intracoastal Waterway; thence into West Bay, Segment Number 2424 of the Bays and Estuaries.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 10, 1991, 3:37 p.m.

TRD-9100311

Wednesday, February 27, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by City of Marlin, Application Number 23-4355A to amend Certificate of Adjudication Number 12-4355, which includes authorization to impound 6560 acre-feet of water in New Marlin Reservoir and 695 acre-feet in Marlin City Lake on Big Sandy Creek, Brazos River Basin in Falls County for recreational purposes, northeast of Marlin.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6368.

Filed: January 10, 1991, 3:39 p.m.

TRD-9100316

Wednesday, February 27, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by Dow Chemical Company, Application Number 12-5328A, to amend Certificate of Adjudication Number 12-5328 to authorize the use of 1800 acre-feet of water for irrigation purposes; to authorize the place of use 4.5 miles southwest of Angleton; to authorize a diversion point on the west or right of Oyster Creek; and to authorize a maximum diversion rate of 15.6 cfs (7000 gpm).

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: January 10, 1991, 3:36 p.m.

TRD-9100309

Wednesday, February 27, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by Texas Department of Criminal Justice, Application Number 11-5338A, to amend Certificate of Adjudication Number 11-5338 to reduce special condition 4(b) from 80 cfs to 64.4 cfs. The original certificate authorized diversion of water from Oyster Creek, tributary of the Intracoastal Waterway, San Jacinto-Brazos Coastal Basis for irrigation of land approximately 6 miles southwest of Angleton, Brazoria County.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: January 10, 1991, 3:37 p.m.

TRD-9100310

Wednesday, March 6, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss notice of application by Kathleen Bartell Fournoy, et al., Application Number 5331, for an 11.121 water use permit to impound 125-acre-feet of water in an existing reservoir created by a dam on the South Fork Guadalupe River, tributary of the Guadalupe River, Guadalupe River Basin for the diversion and use of water for recreational, municipal, and irrigation purposes; 13 miles west-southwest of Kerrville in Kerr County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: January 14, 1991, 3:48 p.m.

TRD-9100466

Wednesday, March 6, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss notice of application by TCR Joint Venture, Application

Number 5329, for an 11.121 water use permit to impound water in an existing reservoir created by a dam on an unnamed tributary of Lick Creek, tributary of the Navasota River, tributary of the Brazos River in the Brazos River Basin and to divert water from Carter Creek, tributary of the Navasota River, tributary of the Brazos River, to the reservoir for subsequent diversion in Brazos County. The applicant also seeks authorization to divert 531 acre-feet of water per annum from Carters Creek for the first 2 years and a maximum of 325 acre-feet per annum thereafter. The water will be used for in-place recreational use and irrigation of land 11 miles southeast of Bryan.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: January 14, 1991, 3:48 p.m.

TRD-9100467

Wednesday, March 13, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by Houston Country Club, Application Number 5336, for an 11.121 water use permit to divert 175 acre-feet of water per annum from Buffalo Bayou, San Jacinto River Basin, into two existing off-channel reservoirs for in-place recreation purposes and subsequent irrigation of a golf course, approximately 7.5 miles west of the Harris County Courthouse in downtown Houston, Harris County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: January 10, 1991, 3:38 p.m.

TRD-9100313

Wednesday, March 13, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by Hector O. and Ana M. Herrera for a water use Permit Number 5333 to divert and use not to exceed 90 acre-feet of water per annum from the San Antonio River, San Antonio River Basin to irrigate 45 acres of land located approximately 10 miles northwest of Karnes City, Karnes County.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6385.

Filed: January 10, 1991, 3:39 p.m.

TRD-9100314

Wednesday, March 20, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the complete agenda, the commission will discuss application by H. B. Zachry Company, Application Number 5337, for an 11.121 Water Use Permit

to divert and use not to exceed 25 acre-feet of water per annum from Six Mile Creek, tributary of the San Antonio River, San Antonio River Basin for industrial use at the applicant's equipment yard within the city limits of San Antonio, approximately 5.5 miles southwest of the Bexar County Courthouse, Bexar County.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6386.

Filed: January 10, 1991, 3:39 p.m.

TRD-9100315

Texas Workers' Compensation Commission

Thursday-Friday, January 17-18, 1991, 9 a.m. The Texas Workers' Compensation Commission met and will meet at the Southfield Building, Room 910, 4000 South IH-35, Austin. According to the agenda summary, the commission will approve minutes of the public meeting of January 10-11, 1991; discussion and consideration of appointment of medical advisory committee; discussion and consideration of rules for adoption; discussion and consideration of rules for proposal; progress report on TWCC implementation of Senate Bill 1; and discussion of future public meeting and agenda.

Contact: George E. Chapman, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: January 14, 1991

TRD-9100410

Regional Meetings Meetings Filed January 10, 1991

The Brazos River Authority Board of Directors, Lake Management Committee met at the Lake Supervisor's Office, Possum Kingdom Lake, January 17, 1991, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555. TRD-9100275.

The Brazos River Authority Board of Directors, will meet at 4400 Cobbs Drive, Waco, January 21, 1991, 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555. TRD-9100274.

The Brazos Valley Development Council Bootstrap Coordinating Body Committee met at the council's office, 3006 East 29th Street, Door #2, Bryan, January 15, 1991, 2 p.m. Information may be obtained from Sandy Shumaker, P.O. Drawer, 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9100276.

The Hickory Underground Water Conservation District Number 1, met at 2023 South Bridge Street, Brady, January 15,

1991, at 7 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9100271.

The Houston-Galveston Area Council Projects Review Committee met at 3555 Timmons Lane, 4th Floor Board Room, Houston, January 15, 1991, 9 a.m. Information may be obtained from Rowena Ballas, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9100265.

The Houston-Galveston Area Council Board of Directors met at 3555 Timmons Lane, Houston, January 15, 1991, 10 a.m. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200. TRD-9100266.

The Kendall County Appraisal District Kendall Board of Directors met at 440 West Bandera Road, MAMA K's Boerne, January 17, 1991, at 5 p.m. Information may be obtained from S. R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9100299.

The Texas Council Risk Management Fund Underwriting/Executive Committees met at the Stouffer Austin Hotel, San Antonio Room 9721 Arboretum Boulevard, Austin, January 12, 1991, at 1:30 p.m. Information may be obtained from Spencer McClure, 8140 Mopac Expressway, Westpark Building 3, Suite 240, Austin, Texas 78759 (512) 794-9268. TRD-9100268.

Meetings Filed January 11, 1991

The Atascosa County Appraisal District Board met at 4th and Avenue J, Poteet, January 17, 1991, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9100353.

The Dallas Area Rapid Transit Governmental Relations Committee met at the DART Office, Board Room, 601 Pacific Avenue, Dallas, January 15, 1991, at noon. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9100326.

The Dallas Area Rapid Transit Budget and Finance Committee met at the DART Office, Board Conference Room, 601 Pacific Avenue, Dallas, January 15, 1991, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9100325.

The Dallas Area Rapid Transit Art and Design Committee met at the DART Office, Conference Room 7A, 601 Pacific Avenue, Dallas, January 15, 1991, at 1:30 p.m. Information may be obtained from Nancy

McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9100324.

The Dallas Area Rapid Transit Planning and Development Committee met at the DART Office, Board Room, 601 Pacific Avenue, Dallas, January 15, 1991, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9100323.

The Deep East Texas Council of Governments Board of Directors met at San Augustine Civic and Tourism Center, San Augustine, January 17, 1991, at noon. Information may be obtained from Walter Diggles, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9100329.

The North Texas Municipal Water District Board of Directors will meet at the administrative offices, 505 East Brown Street, Wylie, at January 24, 1991, 4 p.m. Information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, (214) 442-5405. TRD-9100352.

The Rio Grande Council of Governments Board of Directors will meet at the Main Conference Room, 1014, North Stanton, El Paso, January 18, 1991, at 9:30 a.m. (MST). Information may be obtained from Cecile C. Gamez, 1014 North Stanton, Suite 100, El Paso, Texas 79902, (915) 533-0998. TRD-9100330.

West Texas Municipal Power Agency Board of Directors met in Room 102, 916 Texas, Municipal Square, Lubbock, January 15, 1991, at 10 a.m. Information may be obtained from Robert Massengale, P.O. Box 2000, 1625 13th Street, Lubbock, Texas 79457, (806) 767-2015. TRD-9100351.

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**Meetings Filed January 14,
1991**

The Austin-Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, January 16, 1991, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9100453.

The Austin-Travis County MHMR Center Operations and Planning Committee met at the Board Room 1430 Collier Street, Austin, January 18, 1991, at 7:30 a.m. In-

formation may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9100450.

The Barton Springs/Edwards Aquifer Conservation District met at 1124-A Regal Row, Austin, January 17, 1991, at 5 p.m. Information may be obtained from Bill Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9100452.

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, January 17, 1991, at 7:30 p.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9100455.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, January 18, 1991, at 9 a.m. Information may be obtained from Mrs. Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9100416.

The Bosque Central Appraisal District Board of Directors met at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, January 17, 1991, at 7 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9100445.

The Burnet County Appraisal District Board of Directors met at 223 South Pierce, Burnet, January 17, 1991, at 6:30 p.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9100429.

The Burnet County Appraisal District Appraisal Review Board will meet at 223 South Pierce, Burnet, January 23, 1991, at 9 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9100435.

The Central Texas Council of Governments Central Texas Private Industry Council will meet at 3004 Atkinson, Killeen, January 24, 1991 at 10 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9100430.

The Central Texas Council of Governments Executive Committee will meet at 302 East Central, Belton, January 24 1991, at 12:45 p.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton,

Texas 76513, (817) 939-1801. TRD-9100405.

The Deep East Texas Council of Governments Grants Application Review Committee met at 611 Columbia Street, San Augustine Civic and Tourism Center, San Augustine, January 17, 1991, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Boulevard, Jasper, Texas 75951, (409) 384-5704. TRD-9100417.

The Deep East Texas Private Industry Council, Inc. will meet in Room 202, Commissioners Courtroom, City Hall, Lufkin, January 23, 1991, at 2 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247. TRD-9100451.

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, January 17, 1991, 7 p.m. Information may be obtained from Kathy A. Spencer, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9100428.

The Region One Education Service Center Board of Directors met at 1900 West Schunior, Edinburg, January 15, 1991, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (512) 383-5611. TRD-9100419.

The Riceland Regional Mental Health Authority Board of Trustees met at 3027 North Richmond Road, Wharton, January 17, 1991 at 11:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9100418.

The San Antonio River Authority Board of Directors will meet at SARA General Offices, 100 East Guenther Street, San Antonio, January 23, 1991, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373. TRD-9100406.

The West Central Texas Council of Governments Law Enforcement Training Committee will meet at 1125 East North 10th Street, Abilene, January 22, 1991, at 10:30 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9100448.

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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

Extension of Deadline for Written Comments

In the December 18, 1990, issue of the *Texas Register* (15 TexReg 7383), the Texas Air Control Board (TACB) published a notice of public hearings on proposed rule amendments to be held January 16 and 17, 1991. The purpose of the hearings was to receive testimony on proposed revisions to TACB Regulation I. The deadline of January 18, 1991, for receipt of written comments has been extended to February 8, 1991. All comments at the hearings, as well as written comments received by 4 p.m. on February 8, 1991 in the TACB central office in Austin, will be considered by the board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the central office of the TACB located at 6330 U.S. Highway 290 East, Austin, Texas 78723 and at all regional offices of the agency.

For further information, call Barry Irwin at (512) 451-5711, extension 292.

Issued in Austin, Texas, on January 11, 1991.

TRD-9100414 Lane Hartsock
Director, Planning and Development
Program
Texas Air Control Board

Filed: January 14, 1991

For further information, please call: (512) 451-5711, ext. 433

Ark-Tex Council of Governments Request for Proposal for Construction Equipment Operators Training

The Ark-Tex Council of Governments (ATCOG) is in the process of requesting proposals for Construction Equipment Operators Training for Participants enrolled in Titles IIA and III Programs.

Agencies interested in responding to the proposal must be approved by Texas Education Agency (TEA) and must possess the capability and can assume full responsibility for Classroom Training, training site, training aids and other support systems necessary for the implementation of the program. The project shall be implemented in the Northeast Texas Service Delivery Area encompassing Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.

The proposals selected will be expected to meet the requirements set forth in the Request for Proposal (RFP) and evaluated in terms of responsiveness to RFD type of service and methodology of implementation, cost of service/training and individuals served, past performance of

services, project management and innovative approach. Selection will be made by the Ark-Tex Private Industry Council.

Those interested in receiving a request for proposal packet should contact Peggy White, Manager of Employment and Training, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. The deadline for proposal submission to ATCOG is February 8, 1991.

Issued in Texarkana, Texas, on January 7, 1991.

TRD-9100247 James D. Goerke
Executive Director
Ark-Tex Council of Governments

Filed: January 10, 1991

For further information, please call: (903) 832-8636

Texas Education Agency Consultant Proposal Request

RFP# 701-91-039. This request for proposal is filed in accordance with Texas Civil Statutes, Article 6252-11c.

Eligible Proposers: The Texas Education Agency (Agency) is requesting proposals (RFP# 701-91-039) from institutions of higher education, nonprofit organizations, education service centers, foundations, public or private companies, or a consortia of the foregoing for the development of and implementation of a case study of approximately 10 prekindergarten programs in Texas.

Description: The objectives of this project are to assist agency staff in the assessment of the developmental orientation (i.e. developmental appropriateness) of the prekindergarten programs and to collect information regarding the assessment of prekindergarten students. The proposer will assist agency staff in conducting one-day site visits to a minimum of 10 prekindergarten programs throughout the state. Each site visit will include a full day of classroom observation, personal interviews with prekindergarten administrative staff, campus staff, faculty, and parents of children in the program. A campus data collection instrument will also be reviewed and completed. The contractor will: cooperate with the agency in the development of the data collection instruments and procedures for the site visits and participate in each site visit; assist in the analysis and interpretation of data collected from the site visits; and provide the agency with an evaluation report including an update of a literature review completed in August 1990, the evaluation design, results of the analyses of both quantitative and qualitative data from the site visits, and policy recommendations for the prekindergarten programs.

Dates of Project: The case study of the prekindergarten program will be implemented during the 1990-1991 school year. All site visits must occur during spring 1991. Proposers should plan for a starting date of March 11, 1991, and an ending date of August 30, 1991.

Project Amount: Funding for this project will not exceed \$28,500. This project is 100% federally funded ESEA Chapter 2 funds.

Selection Criteria: Proposals will be approved based upon the ability of each proposer to carry out all requirements contained in the request for proposal. The proposer must be highly skilled in qualitative and quantitative research methods, conducting personal interviews, qualitative and quantitative data analyses, and report writing. Preferred qualifications include personal knowledge of early childhood development, professional practice in a public school setting, experience in interviewing staff and parents from minority cultures, and experience in deriving education policy from empirical social data.

Requesting the Proposal: A copy of the complete request for proposal may be obtained by writing or calling the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or call (512) 463-9304.

Further Information: For clarifying information about this request, contact Rebecca Edmiaston, Division of Program Evaluation, Texas Education Agency, (512) 463-9524.

Deadline for Receipt of Proposals: The deadline for submitting a proposal is 5 p.m., Friday, February 15, 1991.

Issued in Austin, Texas, on January 11, 1991.

TRD-9100422 W. N. Kirby
Commissioner of Education

Filed: January 14, 1991

For further information, please call: (512) 463-9701

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**Office of the Governor, Criminal
Justice Division**

**Texas Narcotics Control Programs, 1991
Grant Program Announcement**

Under the provisions of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), Texas will receive a grant in the amount of \$25.6 million (federal fiscal year 1991 appropriation) to provide funding for the Texas Narcotics Control Program (TNCP). The governor has designated the Criminal Justice Division, Office of the Governor, to administer the program in the form of grants to units of government, as authorized by the Act. The Criminal Justice Division (CJD) is now accepting grant applications for eligible projects from state agencies and local units of governments.

Programs will focus on drug law enforcement, with emphasis on persons who violate state and local laws relating to the production, possession, and transfer of controlled substances. The funds may be used to support projects which improve the apprehension, prosecution, adjudication, or identification of drug offenders for rehabilitation at the time of detention.

Eligible Projects. Only those projects designed for the purpose of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 United States Code 801, et. seq.), and improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders are eligible for grant funding. Such projects must conform to the authorized program areas as specified in the TNCP 1991 application kit and prioritized by the Statewide Strategy for Drug and Violent Crime Control, (January

1991), available from CJD. Additionally to be eligible, each project must be operated by a state agency, local unit of government, or by a combination thereof; each project must demonstrate that it will carry out congressional intent, which is to ensure that the federal assistance provided is coordinated and integrated with state and local drug enforcement efforts, and that the maximum impact on the drug trafficking problem in the state is achieved; and each project must be funded by 75% federal funds and 25% non-federal funds. A 25% local cash match is required.

Significant Restrictions and Special Requirements. Grantee must comply with numerous state and federal certifications and special conditions, as detailed in the 1991 application kit, which govern use of this formula grant. Total capital expenditures cannot exceed 20% of the total amount of an individual grant. Required cash match can be provided by generated program income. The grant project period for any projects funded by this available block of funds will commence June 1, 1991, for a 12 month period. Alcohol-related programs may not be funded under the TNCP, as the Controlled Substances Act expressly states that distilled spirits are not considered a controlled substance. Funds may not be used to replace federal, state, or local funds that would have been available for narcotics control programs in the absence of Anti-Drug Abuse Act funding. All applications must comply with the program criteria and applicable rules of CJD, and must be submitted in the form prescribed by CJD. CJD reserves the right to negotiate modifications to improve the quality and cost effectiveness of any proposed project and to recommend to the governor the acceptance, the acceptance with modification, or rejection of any grant application. This announcement in no way obligates CJD to award grant funds or to pay any costs incurred by applications as a result of responding to this announcement.

Submission Deadline. Applications must be received by CJD no later than 5 p.m. on Friday, March 15, 1991. Applicants must submit copies of applications to the state single point of contact or the regional review agency for review as required under the Texas Review and Comment System (TRACS).

Application Materials. Application kits, forms, and all materials necessary to complete a grant application for this program are available through the CJD or the regional councils of governments.

The Criminal Justice Division will conduct a technical assistance workshop for prospective grant applications on Friday, January 18, 1991 from 9 a.m. until 4 p.m. The location is the Hyatt Regency Hotel, 208 Barton Springs Road, Austin, (512) 478-1234. No pre-registration or fee is required for the workshop.

Issued in Austin, Texas, on January 8, 1991.

TRD-9100427 Geoffrey S. Connor
Deputy General Counsel
Office of the Governor, Criminal Justice
Division

Filed: January 14, 1991

For further information, please call: (512) 463-1919

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**Texas Department of Human Services
Invitation to Bid**

The Texas Department of Human Services (TDHS) announces an invitation to bid (ITB) for purchased food stamp issuance services. TDHS uses a competitive procurement process to ensure and document that services are

of the highest quality, lowest price, and best meet the needs of the clients served.

Description of services. Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) forms. ATP forms will specify client name, case number, ID and issuance numbers, total benefit amount, number of each denomination booklets to be issued, and month valid. Food stamp clients will present issuance agent with ATPs and ID cards. Issuance agent will check to see that the ID card serial number matches the corresponding number on the ATP form. If they match and the ATP is valid for the current month, the client will sign the ATP form in the presence of the issuance agent, who will then exchange the indicated number of each denomination of booklets for the signed ATP form. The issuance agent will write the issuance verification code (from the ID card) on the ATP form, date stamp the ATP form and later batch it for daily delivery to TDHS. To contract with TDHS, the contractor must comply with: all insurance requirements specified in the ITB, including providing an all-risk insurance policy naming TDHS as the guaranteed loss payee. TDHS will procure over-the-counter food stamp issuance services in Tom Green County.

Contact person. To request an ITB package or additional information, contact Margarette Kaylor at (512) 450-3467. Sealed bids must be received by Margarette Kaylor no later than 3 p.m., March 15, 1991 at: Food Stamp Issuance Unit (W-320), Central Client Services, Client Self-support Services Division, Texas Department of Human Services, 701 West 51st Street, P.O. Box 149030, Austin, Texas 78714-9030.

Terms of contract. The contract will be for one 12-month period. TDHS has the option to renew the contract on a non-competitive basis for a limited number of additional periods. The contractor will be paid on a fee per transaction basis for each eligible ATP form processed.

Procedures for awarding contract. Only bids meeting the requirements of the procurement will be considered for contract award. A contract will be awarded to the lowest bidder whose bid meets the specified requirements.

Issued in Austin, Texas, on January 14, 1991.

TRD-9100408 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: January 14, 1991

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

Notice of Award

The Texas Department of Human Services (DHS) announces this notice of service contract award. The invitation for request for proposal was published in the October 2, 1990, issue of the *Texas Register* (15 TexReg 5815).

Description of services. Upon request from DHS, the contractor will recommend a level of care and make recommendations for residential placement of children who are being considered for Levels of care IV, V, VI; and review these children in care semi-annually. The contractor will review 110 private residential facility programs for compliance with levels of care standards and maintain an information system relative to these services.

Name of consultant. The contractor selected to provide these services is Youth for Tomorrow Foundation, 515 Live Oak Drive, Euless, Texas 76040.

Terms and amount of the contract. The contract period is January 1, 1991 through August 31, 1991. The amount of the contract is \$300,000.

Due dates of reports. The contract is predominately a client services contract with monthly reports due at the end of each month. The final report will be due September 30, 1991.

Issued in Austin, Texas, on January 14, 1991.

TRD-9100407 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: January 14, 1991

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

Public Notice

This memorandum of understanding is between the Texas Department of Human Services, hereinafter called TDHS, and the Texas Health and Human Services Coordinating Council, hereinafter called the Council. TDHS is one of several state agencies with whom provider agencies contract to provide residential care for children. Since multi-agency involvement exists, the legislature directed the Council to coordinate rate setting efforts and to set the standard recommended reimbursement rate for residential care for children.

The Council hereby designates TDHS as the primary agency to handle the cost reporting and rate analysis processes for the 24-hour child care facilities cost report. The Council will provide TDHS with information from each state agency with whom 24-hour child care providers contract to provide services. This information includes, but is not limited to, a list of state agency contacts and phone numbers, and an updated mailing list of current providers which includes, when provided by the contracting agency, days of service by level of care information.

Performance calendar. TDHS agrees to work with the Council to establish a set of reasonable deadlines for the performance of duties associated with the cost reporting and rate analysis processes.

The cost report. TDHS agrees to work with the Council to revise the 24-Hour child care facility cost report form. Any 24-hour child care facility cost report submitted to TDHS for processing must be on cost report forms authorized by the Council. TDHS will determine, for all provider agencies who submit the 24-hour child care facility cost report to TDHS for processing, the cost report due date, and which providers will be granted extensions for filing the cost report. TDHS agrees to mail, edit, and audit the cost reports, and enter the information in a data base to be maintained at TDHS. Page 2 TDHS auditors will desk audit all 24-hour child care cost reports submitted to TDHS for processing. Auditors will audit provider agencies in accordance with the allowable and unallowable costs, and the costs not used in rate determination guidelines in the 24-hour child care facility methodology rules. TDHS will perform a sufficient number of on-site audits selected at random and by exceptional profile from a list of all 24-hour child care provider agencies who were mailed a cost report form. TDHS will determine the frequency and nature of these audits. TDHS will notify provider agencies who submitted a 24-hour child care cost

report to TDHS for processing of the exclusions and adjustments made to reported expenses during the desk audit and on-site audit phases of the cost reporting process.

Rate analysis. TDHS will perform the rate analysis that will be used by the Council to determine the standard recommended reimbursement rate for each level of care by following the steps outlined in this notice.

For Level of Care I: use United States Department of Agriculture (USDA) statistics, taken from their publication "Updated Estimates of the Cost of Raising A Child" to determine costs for Level of Care I. Medical costs will be excluded prior to determining these costs; Project all cost categories, excluding medical costs, for the period of the most recent U.S.D.A. estimates to the next ensuing rate period. The Implicit Price Deflator Personal Consumption Expenditures (IPD-PCE) index will be used to calculate projected expenses unless a more appropriate economic adjuster is applicable.

For Levels of Care II-VI: combine reported costs into the following cost areas: administration; routine daily service; dietary; therapeutic; building and transportation; medical/dental; educational; reduce reported costs by the amount of U.S.D.A. or any other federal revenue reported. Page 3 exclude certain reported expenses: All unallowable costs from the medical/dental and educational cost areas are excluded from the standard recommended rate calculations. Cost information from these cost areas is captured on the cost report for statistical purposes; exclude therapy costs for Levels of Care I and II; adjust provider administration, transportation, and building expenses to reflect per diem costs at the median rate of occupancy for each level of care for providers who operate with an occupancy rate of less than the median rate of occupancy at their level of care; project allowable expenses from each of the cost areas for the period from each provider's reporting period to the next ensuing rate period. The Implicit Price Deflator Personal Consumption Expenditures (IPD-PCE) index will be used to calculate projected expenses unless a more appropriate economic adjuster is applicable. When calculating the standard recommended rate for Levels II-VI, TDHS will include expenses of donated items, including depreciation and amortization of the value of the donations and fund-raising, promotion and public relations expenses.

Methodology. TDHS will use the following rate methodology when performing the rate analysis used by the Council to determine the standard recommended rate: combine costs from the projected cost areas into one cost area and rank order those provider agencies' projected costs from low to high for each level of care; choose the median cost from each level of care to become the proposed standard recommended rate for each level of care.

Rate analysis follow-up. TDHS will provide the Council with a detailed summary of how the rate analysis was performed. TDHS will provide each provider agency who submits the 24-hour child care facility cost report to TDHS for processing a summary of its costs as compared to the median child care provider's costs.

Page 4. Coordination with other state agencies. TDHS will notify other state agencies if their contract providers do not comply with due dates, or if the provider fails to provide requested supplemental information, or to allow access to records necessary to audit the cost report. TDHS will coordinate the notification process with other state agencies when a determination needs to be made by that agency regarding a provider's exemption from filing the cost report. If the state agency decides an exemption is in order, TDHS will coordinate with that state agency on the appropriate process for notifying the provider agency.

TDHS representation. TDHS will provide staff representation to any interagency or provider/interagency committee convened by the Council that relates to cost report, cost methodology, or rate analysis issues.

This memorandum of understanding is effective on January 1, 1991, and may be terminated or amended by either party upon written notice from one party to the other.

Contact person. Information regarding any aspect of the memorandum of understanding between the Texas Department of Human Services and Texas Health and Human Services Coordinating Council may be obtained by contacting Mary Anne Joseph, Provider Reimbursement (MC E-601), Texas Department of Human Services, P. O. Box 149030, Austin, Texas 78714-9030, (512) 450-4050.

Issued in Austin, Texas, on January 14, 1991.

TRD-9100409 Nancy Murphy
Agency liaison, Policy and Document
Services
Texas Department of Human Services

Filed: January 14, 1991

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



State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for name change by Countrywide Insurance Company, a foreign casualty insurance company. The home office is in Woodland Hills, California. The proposed new name is Transamerica Countrywide Insurance Company.
2. Application for admission to do business in Texas of Selective Insurance Company of South Carolina, a foreign casualty insurance Company. The home office is in Greenville, South Carolina.
3. Application for admission to do business in Texas of Selective Way Insurance Company, a foreign casualty insurance company. The home office is in Branchville, New Jersey.
4. Application for admission to do business in Texas of Brotherhood Mutual Insurance Company, a foreign casualty insurance company. The home office is in Fort Wayne, Indiana.

Issued in Austin, Texas, on January 10, 1991.

TRD-910030189 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: January 10, 1991

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



Texas State Library and Archives Commission

Consultant Contract Reports

Senate Bill 737 of the 65th Texas Legislature (Texas Civil Statutes, Article 6252-11c) requires state agencies and regional councils of governments to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency is required to file with the Secretary of State a

description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, the Act directs the contracting agencies to file copies of the resulting reports with the Texas State Library. The Library is required to compile a list of the reports received and submit the list quarterly for publication in the *Texas Register*.

Below is a list of reports received for the 4th quarter of 1990. The reports may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin.

Agency: Department of Commerce,

Consultant: David M. Griffith and Associates, Lieutenant.,

Title: A cost allocation plan for Texas Department of Commerce indirect cost proposal for Fiscal Year 1991.

Agency: Commission for the Deaf,

Consultant: Bexar County Deaf Council, **Title:** Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Central Texas Council for the Deaf/Hearing Impaired,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Church's Deaf Support Center,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Corpus Christi Area Council for the Deaf,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Deaf Action Center,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: DSG, Inc., doing business as Sign Shares,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: El Paso Center for the Deaf,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Panhandle Council for the Deaf,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Tarrant County Services for the Hearing Impaired,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Texoma Council for the Deaf,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Consultant: Travis County Council for the Deaf,

Title: Performance and fiscal reports on contracted services rendered at the end of August 31, 1990;

Agency: Education Agency,

Consultant: Center for Assessment and Demographic Studies, Gallaudet University,

Title: 1989-1990 Final report: Texas state survey of hearing impaired children and youth.

Agency: Governor, Office of the Energy Management Center,

Consultant: A&C Consultants, Incorporated,

Title: Final report for Energy Conservation Design Standards for new state buildings.

Agency: Department of Human Services,

Consultant: Deloitte & Touche,

Title: Texas Department of Human Services CPS work measurement study. 3 v.

Agency: Occupational Information Coordinating Committee,

Consultant: Arthur Andersen and Company,

Title: Unemployment insurance wage record feasibility study and pilot test project: final report.

Agency: Water Development Board,

Consultant: John Alexander,

Title: [Texas Water Development Board portfolio management system database structure modifications].

Issued in Austin, Texas, on January 9, 1990.

TRD-9100333

Raymond Hitt
Assistant Director
Texas State Library and Archives
Commission

Filed: January 11, 1991

For further information, please call: (512) 463-5440

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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 December 31, 1990, 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 Texas New Mexico Power Company for a Certificate of Convenience and Necessity for Proposed Transmission Line within Denton County. Docket Number 9953 before the Public Utility Commission of Texas.

The Application: In Docket Number 9953, Texas New Mexico Power Company requests approval of its application to construct approximately 3.24 miles of 138kV transmission line in Denton County.

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 January 9, 1991.

TRD-9100317

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 10, 1991

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

Notice of Intent to File Application

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 an addition to the customer-specific PLEXAR-Custom service for the University of Texas at Houston in Houston.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of PLEXAR-Custom Service for the University of Texas at Houston Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 9965.

The Application. Southwestern Bell Telephone Company is requesting approval of an addition to the PLEXAR-Custom service for the University of Texas at Houston. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to 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 Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 10, 1991.

TRD-9100368

Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 11, 1991

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

The University of Texas System, The University of Texas at Austin

Consulting Services Request for Proposal

The University of Texas system and The University of Texas at Austin, in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, solicit to contract with a consultant to conduct a professional study pertaining to university expenditures with minority and female-owned small businesses.

Project Description. The consultant selected shall provide The University of Texas System and The University of Texas at Austin managerial expertise and recommendations in development of a comprehensive program to improve procedures for identifying qualified minority and female-owned small businesses and increasing expenditures with such businesses. The study will be based on a sample of several University operating units, including facilities planning and construction, major research centers, academic departments, and other educational and business affairs units. A summary of the tasks to be performed in this study include identification, review, and assessment of: expenditures made by each unit during the 1989-1990 fiscal year by category, e.g. supplies and materials, equipment, subcontracts, consulting, professional services, etc.; the level of total expenditures; and the level of expenditures with minority and female-owned small businesses; procedures now being used by the individual units related to doing business with minority and female-owned small businesses; methodologies now in use in each unit for procurement selection by category of expenditure; development of recommendations as to those areas or sub-areas, by expenditure category, which have the greatest potential for increasing the participation by minority and female-owned small businesses; recommendations of spe-

cific minority and female-owned small business that could provide these services consistent with the level of quality, cost, and response time currently being provided to these units; and, as may be appropriate; other recommendations for improving procedures pertaining to doing business with minority and female-owned small businesses.

This contract will be for a three month period provided the contractor fulfills all contract requirements and provides the quality of work desired. any extension of time or additional work rests at the option of the University.

Contact. Written information describing the University units to be reviewed may be obtained from Bobby G. Cook, Associate Vice President and Business Manager, The University of Texas at Austin, Main Building 112, Austin, Texas 78712, (512) 471-4503.

Procedure Selection of Consultant. Proposals will be evaluated by The University of Texas System and The University of Texas at Austin, and selection will be based on experience, qualifications, availability, and cost considerations. The entity selected must be familiar with higher education administration, state and federal laws, regulations, and reporting requirements. A resume fully describing the entity and the principals directing the study must accompany any such proposal.

Due Date. Proposals must be received by the Associate Vice President and Business Manager, The University of Texas at Austin, by 5 p.m., February 15, 1991.

Issued in Austin, Texas, on January 11, 1991.

TRD-9100380

Arthur H. Dilly
Certifying Official
The University of Texas System, The
University of Texas at Austin

Filed: January 11, 1991

For further information, please call: (512) 499-4402

Texas Water Development Board Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the board.

Public Utilities Board of Brownsville, P.O. Box 3270, Brownsville, Texas 78520-3270, received November 2, 1990, application for financial assistance in the amount of \$18,375 from the Research and Planning Fund.

Cameron County Water Control and Improvement District, Santa Rosa, Texas 78593, received November 15, 1990, application for financial assistance in the amount of \$26,250 from the Research and Planning Fund.

Willacy County, Courthouse Annex, Raymondville, Texas, 78580, received November 15, 1990, application for financial assistance in the amount of \$26,250 from the Research and Planning Fund.

City of Clyde, P.O. Drawer TT, Clyde, Texas 79510, received December 17, 1990, application for an increase in financial assistance of \$200,000 from the State Water Pollution Control Revolving Fund.

Northwest Grayson County Water Control and Improvement District Number 1, P.O. Box 715, Gordonville, Texas 76245, received December 12, 1990, application for financial assistance in the amount of \$1,100,000 from the Water Supply Account of the Texas Water Development Fund.

City of Huntington, P.O. Drawer 349, Huntington, Texas 75949, received December 14, 1990, application for financial assistance in the amount of \$620,000 from the Water Supply Account of the Texas Water Development Fund.

City of Goliad, 108 West End Street, Goliad, Texas 77963, received December 13, 1990, application for financial assistance in the amount of \$485,000 from the Water Supply Account of the Texas Water Development Fund.

University of Texas at San Antonio, San Antonio, Texas 78285-0605, received November 9, 1990, application for financial assistance in an amount not to exceed \$55,000 from the research and Planning Fund.

Western Network, 1215 Paso De Teralta, Santa Fe, New Mexico, 87501, received December 17, 1990, application for an increase in financial assistance of \$15,090 from the Research and Planning Fund.

Additional information concerning this matter may be obtained from G. E. Kretzschmar, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on January 9, 1991.

TRD-9100237

G. E. Kretzschmar
Executive Administrator
Texas Water Development Board

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Public Notice

The Texas Water Commission hereby gives notice of the availability of the draft "1990 Update to the Nonpoint Source Water Pollution Assessment for the State of Tex-

as." This document is available for public review and comment for the next 30 days.

The nonpoint source assessment report update compiles monitoring data and evaluations of waters submitted in response to a questionnaire sent to over 200 entities throughout the state concerned with water quality, in addition to ongoing assessment. The Texas State Soil and Water Conservation Board, in cooperation with the commission, also gathered information from agricultural agencies and interests and 210 soil and water conservation districts statewide.

The primary purpose of the nonpoint source assessment program is to ascertain the water bodies which are impacted such that the Texas surface water quality standards are violated or the goals and requirements of the Clean Water Act are not met. These waters are identified as needing more near-term remediation efforts. Also important is the listing of all waters which are known to be affected by this phenomenon, indicating possible future problems. Targeting these water for pollution prevention efforts is key to the overall effort.

The public is encouraged to present relevant evidence or opinions concerning the draft assessment report update. In order to meet federal statutory deadlines, the commission would appreciate receiving a copy of all written comments by February 22, 1991. Requests for a copy of the update and any comments should be addressed to Barbara Landry, Water Quality Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8452.

There is no charge for the draft copy.

The date selected for availability of this document is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 30 days prior to February 22 is due to the necessity of scheduling the review period during this time.

FACT SHEET

**1990 UPDATE TO THE NONPOINT SOURCE WATER
POLLUTION ASSESSMENT FOR THE STATE OF TEXAS**

The following table represents a 1990 listing of the affected waterbodies in the State of Texas as a result of monitoring data and evaluations compiled from continuing assessment, as well as responses to the questionnaire sent to over 200 entities throughout the state. The table represents the best new data available at the time of publication of this fact sheet. It is a supplement to the original 1988 assessment and is subject to revision prior to the final submission of the draft "1990 Update to the Nonpoint Source Water Pollution Assessment for the State of Texas" to EPA.

<u>Water Body</u>	<u>Segment or Basin</u>	<u>Problem Status Known, Potential or Concern</u>
*Canadian River	0101	Concern
Lower Red River	0201	Potential
Red River Below Lake Texoma	0202	Potential
*Beaver Creek	02	Concern
*Paradise Creek	02	Concern
*Paradise Creek	02	Concern
*Washita River	02	Concern
Red River Above Pease River Creek	0206	Potential
*Lake Arrowhead	0212	Concern
Wichita River Below Diversion Dam	0214	<u>Known</u>
McKinney Bayou	0225	Potential
Mount Vernon Municipal Reservoir	0300.L003	Concern
City Lake (Phillips Lake)	0300.L010	Concern
Toledo Bend Reservoir	0504	Potential
*Toledo Bend	0504	Concern
Sabine River	0505	Potential
Lake Tawakoni	0507	Concern
*Cow Bayou	0511	Concern
Lake Fork Reservoir	0512	Potential
*Smith County	05/06	Concern
*Neches River	0604	Concern
Attoyac Bayou	0612	Potential
*Attoyac Bayou	0612	Concern
*Angelina River	06	Concern
*Nacogdoches County	06	Concern
*Striker Creek/Lake Striker	06	Concern

*Lake Livingston	0803	Concern
Upper Trinity River/Lower West Fork Trinity River	0805	<u>Known</u>
Eagle Mountain Lake	0809	Potential
*West Fork of the Trinity River	0810	Evaluated
Lake Bridgeport	0811	Potential
Cedar Creek Reservoir	0818	<u>Known</u>
*Denton Creek	0825	Concern
*Chambers Creek	08	Concern
*Mountain Creek	08	Concern
Clear Fork Trinity River Above Lake Weatherford	0833	Potential
Richland-Chambers	0836	Concern
Garners Bayou/Reinhardt Bayou	10	Concern
Lake Houston	1002	<u>Known</u>
*Lake Houston	1002	Concern
*Lake Conroe	1012	Concern
Clear Creek Tidal	1101	Potential
Armand Bayou Tidal	1113	Potential
Brazos River	1204	Concern
*Lake Granbury	1205	Concern
*Possum Kingdom Lake/Brazos R.	1207	Concern
Stillhouse Hollow Lake	1216	Concern
Belton Lake	1220	Potential Concern
Leon River Below Proctor Lake	1221	Potential
*Proctor Lake	1222	Concern
*Leon River	1223	Concern
*Lake Leon	1224	Concern
*Goose Branch Creek	1226	Concern
*Nolan Creek	1227	Concern

*Nolan River	1227	Concern
Lake Pat Cleburne	1228	Concern
*Lake Graham	1231	Concern
Clear Fork/Brazos River	1232	Potential
*Buffalo Springs Lake	12	Concern
*California Creek Watershed	12	<u>Known</u>
*Lake Ransom Canyon	12	Concern
*Lower Aquilla Creek	12	Concern
*Nolan R. Watershed Buck Creek Robinson Branch West Fork of the Nolan River Lake Pat Cleburne	12	Concern
*Olney Lake	12	Concern
Caney Creek	1304	<u>Known</u>
Jim Ned Creek	14	Concern
Lake Johnson City	1400.L008	Concern
Colorado River Above Columbus	1402	Potential
Colorado River at Wharton	1402	Potential
Lake Austin	1403	Potential
Lake Travis	1404	Potential
Lake Marble Falls	1405	Potential
Lake LBJ	1406	Potential
Colorado River Below Concho R.	1410	<u>Known</u>
Concho River	1421	<u>Known</u>
Colorado River Below E.V. Spence Reservoir	1426	<u>Known</u>
*Wilbarger Creek	1428	Concern
Town Lake	1429	<u>Known</u>
Barton Creek	1430	<u>Known</u>
*Dawson County	14	Potential

*Lake Trammell	14	Concern
*Oak Creek Reservoir	14	Concern
*Sandy Creek	14	Concern
*Sulphur Springs Draw	14	Concern
Guadalupe River Below San Marcos River	1803	Potential
*San Antonio River near confluence with Guadalupe R. & below Fannin	1803 1901	Concern
*Cypress Creek	18	Concern
Camp Meeting Creek	18	Potential
Quinlan Creek	18	Potential
Town Creek	18	Potential
Guadalupe River Below Canyon Dam	1812	Concern
Lower Leon Creek	1906	Concern
*Lake Alice	2200.L003	Concern
Arroyo Colorado	2202	<u>Known</u>
City Lake/E. L. Runayn - Harlingen	22	Potential

*Rio Grande River	2304	Concern
*Lake Casa Blanca	23	Concern
*Cedar Lake	2422	Potential
Clear Lake	2425	<u>Known</u>
*St. Charles Bay	2473	Concern
*Carrizo Aquifer		Potential
*Ogallala Aquifer		Concern
*Ogallala Aquifer		Potential
*Seymour Aquifer		Concern
*Seymour Aquifer		Concern
*Seymour Aquifer		Concern

Known Standards, designated uses or fishable, swimmable goals impacted

Potential Water quality data shows water quality parameters or criteria occasionally exceeded; stream standards not violated

Concern Information other than water quality data is insufficient to determine severity, extent, or source of loadings; stream standards not violated

* List submitted from Texas State Soil and Water Conservation Board

Issued in Austin, Texas, on January 10, 1991.

TRD-9100269 Jim Haley
Director, Legal Division
Texas Water Commission

Filed: January 10, 1991

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