

Texas Register

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

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Typographers
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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

43 TAC §§1.300-1.305—3075, 3269

Part IV. Texas High-speed Rail Authority

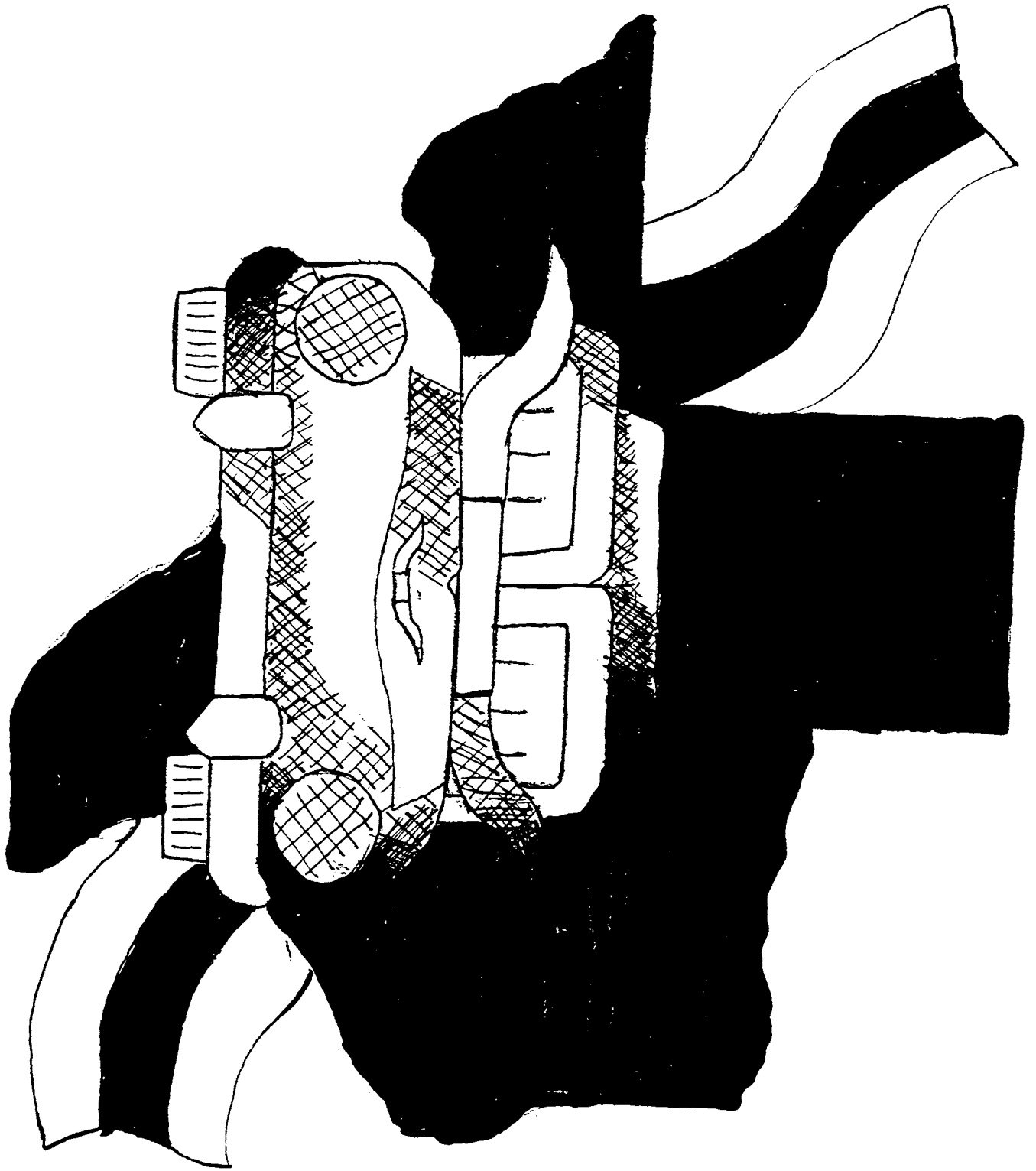
43 TAC §§81.1, 81.11, 81.21, 81.31, 81.41, 81.51, 81.61—3514

43 TAC §§81.100, 81.110, 81.120, 81.130, 81.140, 81.150, 81.160—3515

43 TAC §§83.1, 83.11, 83.21, 83.31—3515

43 TAC §§83.100, 83.110, 83.120—3517

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Adrian Smith

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 28. INSURANCE

Part I. State Board of Insurance

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

Subchapter GG. Texas Health Insurance Risk Pool Plan of Operation

• 28 TAC §§3.7001-3.7016

The State Board of Insurance adopts on an emergency basis new §§3.7001-3.7016, concerning the Texas Health Insurance Risk Pool plan of operation. The new sections are adopted on an emergency basis as new Subchapter GG of Chapter 3, concerning life, accident, and health insurance and annuities. An imminent peril to the public health and welfare requires the adoption of the sections on an emergency basis to implement the operation of the Texas Health Insurance Risk Pool, created by the Insurance Code, Article 3.77, in order to provide for access to quality health care at minimum cost to the public for medically uninsurable persons. New §3.7001 names the pool and cites the statute which created it. New §3.7002 defines the terms "board," "insurance board," "plan," "pool," and "pool administrator." Section 3.7003 provides that the pool shall perform its function in accordance with the Insurance Code, Article 3.77. New §3.7004 describes the organization and structure of the pool. Section 3.7005 sets forth the powers of the pool. New §3.7006 establishes the composition of the board of directors of the pool, prescribes the procedure and requirements for holding meetings of the board of directors, and provides that the board shall select a pool administrator through a competitive bidding process. Section 3.7007 specifies the officers of the board of directors and the duties of each office. New §3.7008 provides for appointment of committees by the board of directors. New §3.7009 describes the operation of the pool to be conducted by the pool administrator. Section 3.7010 establishes disclosure and voting requirements with respect to contracts or transactions between the pool and interested parties. New §3.7011 provides for annual reports and examination of the pool and for audits of the pool. New §3.7012 provides that the pool may pay an agent's referral fee to a licensed insurance agent who refers an applicant to the pool if the applicant is accepted. Section 3.7013 provides that the pool shall by rule establish for indemnification of or purchase of insurance for the board and pool employees, if any. New §3.7014

provides that the Insurance Code, Article 3.77, is incorporated as part of the plan of operation of the pool and prevails over the provisions of the plan. New §3.7015 states that the pool may establish a grievance procedure. Section 3.7016 provides that the plan of operation may be amended or repealed by a two-thirds vote of the board of directors and with the approval by the State Board of Insurance.

The new sections are adopted on an emergency basis under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state, and under the Insurance Code, Article 3.77, §5(c), which directs the State Board of Insurance to approve the plan of operation of the Texas Health Insurance Risk Pool if the board determines the plan is suitable to assure the fair, reasonable, and equitable administration of the pool.

§3.7001. Name. This pool shall be known as the Texas Health Insurance Risk Pool, an unincorporated nonprofit association, created by the Insurance Code, Article 3.77, added by Acts 1989, 71st Legislature, Chapter 1094, §2, effective September 1, 1989.

§3.7002. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Board—The board of directors of the Texas Health Insurance Risk Pool.

Insurance board—The three-member State Board of Insurance

Plan—Plan of operation for the Texas Health Insurance Risk Pool.

Pool—The Texas Health Insurance Risk Pool.

Pool administrator—One or more administering insurers or a third-party administrator, certified by the State Board of Insurance, selected by the board.

§3.7003. Plan of Operation. The pool shall perform its functions in accordance with the Insurance Code, Article 3.77, and with the plan. The plan shall become effective upon approval by the insurance board.

§3.7004. Organization and Structure.

(a) The pool is governed by a board of directors, composed of 12 members appointed by the insurance board.

(b) Eligibility for participation in the pool is governed by the Insurance Code, Article 3.77.

(c) The pool is to be financed through premiums paid by pool participants and, if necessary, through assessments as provided by the Insurance Code, Article 3.77, §12.

(d) The amounts of any assessment are reimbursed by the state as provided by the Insurance Code, Article 3.77, §12(f).

§3.7005. Powers of the Pool.

(a) The pool may exercise any of the authority that an insurance company authorized to write health insurance in this state may exercise under the law of this state, except the pool may not provide group insurance coverage. The pool is specifically authorized to:

(1) provide individual health benefits coverage to persons who are eligible for that coverage under the Insurance Code, Article 3.77;

(2) enter into contracts that are necessary to carry out the Insurance Code, Article 3.77, including, with the approval of the commissioner of insurance, entering into contracts with similar pools in other states for the joint performance of common administrative functions or with other organizations for the performance of administrative functions;

(3) sue or be sued;

(4) institute any legal action necessary to avoid payment of improper claims against the pool or the coverage provided by or through the pool or to recover from an eligible person the amount of benefits that are not for covered expenses;

(5) subject to the Insurance Code, Article 3.77, establish appropriate rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, and claim reserve formulas and perform any actuarial functions appropriate to the operation of the pool;

(6) adopt policy forms, endorsements, and riders and applications for coverage;

(7) issue insurance policies subject to the Insurance Code, Article 3.77, and this subchapter;

(8) appoint appropriate legal, actuarial, and other committees that are necessary to provide technical assistance in operating the pool and performing any of the functions of the pool;

(9) employ any persons necessary to assist the pool in carrying out its responsibilities and functions;

(10) provide and accept applications for health benefits coverage provided by the pool;

(11) develop a plan for the periodic advertising of the general availability of health benefits coverage from the pool;

(12) develop and promulgate a list of health conditions that are uninsurable, the existence of which makes an applicant to the pool eligible for coverage under the Insurance Code, Article 3.77, §10(a); and

(13) adopt rules it determines necessary to carry out the Insurance Code, Article 3.77, and other laws of this state under which the pool is authorized to operate.

(b) The board may name one or more banks as depository for pool funds. Reasonable delegation of deposit and withdrawal authority to such accounts for pool business may be made consistent with prudent fiscal policy. To the extent that funds in a depository bank are not insured by the Federal Deposit Insurance Corporation, the funds must be secured in the manner provided by rule of the board. The pool administrator is responsible for handling, safe-guarding, investing, and disbursing the funds of the pool, subject to direction of the board as provided in the pool's rules and bylaws and board orders. The pool administrator serves the pool in a fiduciary capacity for the handling, safe-guarding, and disbursing of funds.

(c) The board may review the Insurance Code, Article 3.77, and other appropriate insurance laws and regulations in order to make recommendations to the insurance board and the legislature for the improved operation of the pool.

§3.7006. Board of Directors.

(a) The pool is governed by a board composed of 12 members.

(1) Members of the board shall be appointed by the insurance board for staggered six-year terms.

(2) The board is composed of:

(A) three persons affiliated with insurance companies admitted and authorized to write health insurance in Texas;

(B) one person affiliated with a group hospital service corporation

operating under the Insurance Code, Chapter 20;

(C) one person affiliated with a health maintenance organization operating under the Texas Health Maintenance Organization Act;

(D) one doctor of medicine;

(E) one doctor of osteopathy;

(F) one hospital administrator;

(G) one advanced nurse practitioner;

(H) one consumer who is insured by the pool; and

(I) two representatives of the general public who are not employed by or affiliated with an insurance company or plan, group hospital service corporation, or health maintenance organization or licensed as or employed by or affiliated with a doctor of medicine, doctor of osteopathy, hospital, or other health care provider. This limitation does not include a person whose only affiliation with an insurance company or plan, group hospital service corporation, or health maintenance organization is as an insured or as a person who has coverage through a plan provided by the corporation or organization.

(3) If a vacancy occurs on the board, the insurance board shall fill the vacancy for the unexpired term with a person who has the appropriate qualifications to fill that position on the board.

(4) The insurance board shall designate one of its appointees to the board to serve as chairman. The chairman serves in that capacity at the pleasure of the insurance board.

(5) Each member of the board is entitled to be paid a per diem for each day on which the member performs his duties as a member of the board and to reimbursement of his expenses while engaged in performing his duties as a member of the board. The amount of per diem and the amount of reimbursement for expenses is the same as provided by the General Appropriations Act for state officials.

(b) An annual meeting of the board shall be held, no later than May 31 of each year, at such time and place as the board may determine. At each annual meeting, the board shall:

(1) review the plan and submit to the insurance board any amendments to the plan which are considered by the board to be necessary or suitable;

(2) review each outstanding contract or agreement, other than individual policies of health benefits coverage, and direct the pool administrator to renegotiate any changes considered necessary by the board;

(3) review underwriting policies and practices, policy forms, and rates for coverage issued by the pool;

(4) review, consider, and act on any other matters deemed by the board to be necessary and proper for the administration of the pool; and

(5) review the independent audit of the pool and evaluate the performance of the pool administrator.

(c) At the annual meeting of the board, and more frequently if necessary, the board shall review actual and anticipated operating revenue and expenses and actual and anticipated outstanding contractual obligations to determine if funds exist to pay its claims and meet its other financial obligations and, if not, the board shall make an estimate of the amount that will be necessary to fund any shortage, and shall notify the insurance board in writing of this shortage and the estimated amount of money necessary to fund the shortage.

(1) The insurance board, on receiving notice of such shortage, shall direct the commissioner of insurance to impose an assessment on each insurer authorized to write health insurance in Texas.

(2) The total amount of assessments to be collected by the commissioner of insurance shall be in the amount that is sufficient to fund the pool's shortage.

(3) The assessment imposed against each insurer shall be in an amount that is equal to the ratio of the gross premiums collected by the insurer for health insurance in this state during the preceding calendar year to the gross premiums collected by all insurers for health insurance in this state during the preceding calendar year.

(4) The insurance board by rule shall provide the procedures, criteria, and forms necessary to implement, collect, and deposit assessments made and collected under this section.

(5) Each insurer that pays an assessment under this section is entitled to reimbursement by the state in an amount equal to the amount of the assessment paid under this section.

(d) The board shall establish by rule the days and times for its regularly scheduled meetings. Special meetings of the board may be called by a majority of the board or the chairman and will be held at the time and place fixed by the board or the chairman, whoever called the meeting. Meetings shall be held in accordance with the Texas Open Meetings Act (Texas Civil Statutes, Article 6252-17).

(e) Written notice of regularly scheduled and special meetings, stating the time and place and, if a special meeting, the purpose of the meeting, will be delivered either personally, by mail, or by telefax at the direction of the person calling the meeting, to each board member in compliance with the Open Meetings Act before the scheduled date of the meeting. If mailed or telefaxed, a notice is deemed delivered when deposited or telefaxed with the transmitting agency, postage or charges prepaid, and addressed to the board members.

(f) Seven members of the board, present either in person or by telephone, constitute a quorum at board meetings. The act of a majority of board members voting in person or by telephone at a meeting is necessary to approve any action of the board, except two-thirds of the entire membership of the board is required for actions dealing with the levy of assessments, approval, and discharge of the pool administrator, or removal of officers.

(g) If notice is required to be given to any member of the board, a waiver of notice in writing, signed by the person entitled to the notice, is equivalent to the giving of timely notice. The attendance of a board member at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

(h) The board shall select a pool administrator through a competitive bidding process that includes:

- (1) establishing bid criteria;
- (2) publishing invitations in appropriate media; and
- (3) establishing deadlines for submission and opening of bids.

(A) The board shall evaluate bids submitted based on the following criteria:

(i) an insurer's or third party administrator's proven ability to handle individual accident and health insurance;

(ii) the efficiency of an insurer's or third party administrator's claims paying procedures;

(iii) an estimate of total charges for administering the pool;

(iv) an insurer's or third party administrator's ability to administer the pool in a cost-efficient manner;

(v) an insurer's or third party administrator's financial condition as reflected by documents and information required by the board to be submitted with the bid or provided by the board's or insurance board's staff; and

(vi) an insurer's or third party administrator's ability to provide its services in a trustworthy and competent manner.

(B) The pool administrator shall serve for a term of three years from the date on which the board issues its order formally making the selection. Not later than one year before the expiration of a pool administrator's term, the board shall invite all insurers, including the current pool administrator, to submit bids to serve for the succeeding three-year administration period. Selection of the succeeding pool administrator must be made not later than the sixth calendar month preceding the month in which the pool administrator's term expires.

(i) The board may hire such persons or organizations as attorneys at law, actuaries, accountants, claims personnel, and such other specialists or persons or organizations with expertise in these areas and whose advice or assistance is deemed by the board to be necessary to the discharge of its duties imposed by law. The board may agree to compensate these persons or organizations in the amount determined necessary by the board.

(j) A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the secretary of the board, and a copy shall be forwarded to the insurance board. Copies of these minutes shall be available upon request and payment of the cost of production.

(k) The board shall develop, implement, and periodically update, as necessary, a program designed to provide public information with respect to the existence of the pool, the eligibility requirements for coverage under the pool, and the procedures for enrollment. As soon as practicable, after having selected the initial pool administrator, the board shall develop and adopt its initial requirements for eligibility and procedures for enrollment into the pool and submit to the insurance board a proposed amendment to this plan that summarizes these initial requirements for eligibility and procedures for enrollment in the pool.

§3.7007. Officers.

(a) The officers of the board will be the chairman of the board, a vice chairman, a secretary, a treasurer, and such other officers as the board may consider necessary who, except for the chairman, will be elected annually by the board at its annual meeting and shall serve until their successors are elected and have qualified. An officer, except the chairman, may be removed with or without cause by the board. Except for the chairman, vacancies and newly created offices will be filled by the board. One person may hold more than

one office, but no person may be both chairman of the board and either vice chairman or secretary. Officers shall perform their duties and may exercise the powers and authority assigned by the board, incident to the office, and provided in this plan.

(b) The chairman of the board shall preside at meetings of the board and shall assume such duties as shall be designated from time to time by the board. The chairman, when authorized by the board, will execute and deliver documents in the name of the pool.

(c) The vice chairman of the board shall act as chairman at meetings in the absence of the chairman.

(d) The secretary will keep and have custody of the records of the pool and the minutes of the proceedings of the board; will give all notices required; and, when authorized by the board, will execute, attest, affix the pool seal to, and deliver documents of the board.

(e) The treasurer will be custodian of the property of and chief financial officer for the board and will be responsible for assuring that correct and complete books and records of account are kept for the pool.

§3.7008. Committees. The board shall appoint such committees as it may from time to time deem necessary. Such committees may include, but are not limited to, an executive committee, a nominating committee, a contract forms committee, a rate committee, an advertising committee, an actuarial committee, an underwriting committee, a legal affairs committee, and a grievance committee. The membership of these committees is not limited to members of the board.

§3.7009. Operations.

(a) The pool shall be administered by a pool administrator, who shall:

(1) perform eligibility and administrative claims payment functions for the pool;

(2) establish a billing procedure for collection of premiums from persons insured by the pool;

(3) perform functions necessary to assure timely payment of benefits to persons covered under the pool, including:

(A) providing information relating to the proper manner of submitting a claim for benefits to the pool and distributing claim forms; and

(B) evaluating the eligibility of each claim for payment by the pool;

(4) submit regular reports to the board relating to the operation of the pool; and

(5) determine after the close of each calendar year the net written and earned premiums, expense of administration, and paid and incurred losses of the pool for that calendar year and report this information to the board and the insurance board on forms prescribed by the commissioner of insurance.

(b) The pool shall pay the pool administrator for its expenses incurred in performing its duties and functions as documented and submitted by the pool administrator.

(c) The board shall determine the form and content of the report required by subsection (a)(4) of this section and the time at which reports must be made.

(d) The board shall determine the times at which billing for the pool will be done by the pool administrator.

§3.7010. Interested Parties. No contract or transaction, between the pool and one or more of its board members or between the pool and any other corporation, partnership, association, or other organization in which one or more of its board members is a director or has a financial interest, shall be void or voidable if the interested board member discloses at the board meeting the material facts as to his relationship or interest and as to the contract or transaction and does not vote on the contract or transaction.

§3.7011. Records and Reports.

(a) The fiscal year of the pool shall coincide with the calendar year.

(b) The board shall make an annual report as required by the Insurance Code, Article 3.77, not later than May 1 of each year to the insurance board. Such report shall include a financial report for the preceding calendar year in a form approved by the insurance board and a review of the activities of the pool during the preceding calendar year.

(c) The board shall conduct periodic audits to assure the general accuracy of the financial data submitted to the pool. The board shall cause the pool to have an annual audit of its operations and assets by an independent certified public accounting firm.

(d) The pool shall be subject to and responsible for examination by the insurance board. Not later than March 1 of each year, the board shall submit to the commissioner of insurance an audited financial report for the preceding calendar year in a form approved by the insurance board.

(e) All policy forms issued by the pool shall conform to the requirements of the Insurance Code, Article 3.77.

§3.7012. Agents. The pool may pay a referral fee to a licensed insurance agent who refers an applicant to the pool if that applicant is accepted for coverage by the pool.

§3.7013. Indemnification. The board shall adopt rules providing for indemnification of, or purchase of insurance for, the board and pool employees, if any.

§3.7014. Conformity to Statute. The Insurance Code, Article 3.77, is incorporated as part of this plan and prevails over the provisions of this plan.

§3.7015. Grievance Procedures. The pool may provide by rule for grievance procedures.

§3.7016. Amendments. The plan of operation may be altered, amended, or repealed by a vote of two-thirds of the board members and approval by the State Board of Insurance.

Issued in Austin, Texas, on June 12, 1990.

TRD-9006099 Nicholas Murphy
Chief Clerk
State board of Insurance

Effective date: June 12, 1990

Expiration date: October 10, 1990

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

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**Chapter 19. Agents' [Agent's]
Licensing**

**Subchapter K. Continuing
Education Requirements for
Insurance Agents and Ad-
justers**

• 28 TAC §§19.1001-19.1011

The State Board of Insurance adopts on an emergency basis amendments to §§19.1001-19.1011, concerning continuing education for licenses under the provisions of the Insurance Code, Articles 21.07-1, 21.07-3, 21.07-4, and 21.14. The amendments are necessary to better administer the provisions of Article 21.07-1 and Article 21.14, which direct the State Board of Insurance to certify continuing education programs for certain classes of agents and to implement amendments to Article 21.07-3 and Article 21.07-4 made by the 71st Legislature, which directed the board to certify continuing education programs for adjusters, managing general agents, and certain other classes of agents. An imminent peril to the public welfare requires adoption of these amendments on an emergency basis to carry out recent legislation to improve regulation of insurance agents and adjusters by strengthening control over educational requirements. The amendment to §19.1001 adds appropriate statutory references to include managing general agents and insurance adjusters

within the scope of the subchapter. The amendment to §19.1002 adds definitions of "approval" and "credit hours" and changes the definition of "approved course of study," "class hours," "educational coordinator," "licensee," "provider," and "staff." The amendment to §19.1003 provides for additional exemptions from the education requirements and sets forth the initial education requirement for persons licensed under the Insurance Code, Article 21.07-3 or Article 21.07-4. The amendment to §19.1004 establishes the continuing education requirement for managing general agents and insurance adjusters and provides that licensees under the Insurance Code, Article 21.07-4, must complete three hours of the required 15 hours in courses dealing with consumer protection. The amendment to §19.1005 clarifies the consequences of failing to comply with continuing education requirements. The amendment to §19.1006 elaborates on the procedure for obtaining approval of courses of study and provides for decertification of courses under certain circumstances. The amendment to §19.1007 requires licensees to preserve for four years copies of summary reports filed at the time of license renewal. The amendment to §19.1008 deletes the 30-day period for correction of discrepancies in the records of a licensee or provider and states that a hearing may be required before a provider, whose course approval has been withdrawn on the basis of improper records, may be permitted to submit courses again. The amendment to §19.1009 expands the composition of the Texas Continuing Education Advisory Council and clarifies that the role of the council is advisory. The amendment to §19.1010 removes the requirement that a copy of certain articles of the Insurance Code be distributed with every copy of the subchapter. The amendment to §19.1011 adopts by reference SBI Form LDCE-0012, Conditional Approval Letter. The board has filed copies of SBI Form LDCE-0012 with the Office of the Secretary of State, Texas Register Section. Persons wishing to obtain copies of the form may obtain them from the Educational Coordinator, Agents' Licensing Section, State Board of Insurance, Mail Code 014-3, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments are adopted on an emergency basis under the Insurance Code, Articles 21.07-1, §3A; 21.07-3, §6A; 21.07-4, §7A; and 21.14, §5b, which directs the State Board of Insurance to establish a procedure for certifying, and to certify, continuing education programs for adjusters and for certain classes of insurance agents.

§19.1001. Purpose and Scope. The purpose of this subchapter is to set forth a procedure for certifying continuing education programs for agents and adjusters licensed under the Insurance Code, Articles [Article] 21.07-1, 21.07-3, 21.07-4, and [Article] 21.14, and to establish requirements for implementation of the continuing education programs mandated in the Insurance Code, Articles 21.07-1, §3A; 21.07-3, §6A; 21.07-4, §7A; and [Article] 21.14, §5(b)[, and Article 21.07-1, §3A].

§19.1002. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Approval—The process a proposed course goes through that includes review and correspondence and may result in either approval or disapproval.

Approved course of study—A course:

(A) which the educational coordinator of the agents' licensing section of the State Board of Insurance has placed on a list of approved courses after a review by the staff of that section considering [been deemed to meet] the requirements in §19.1006 of this title (relating to Approved Courses of Study); and [.]

(B) which has received a Conditional Approval Letter, SBI Form LDCE-0012, as described in §19.1006(e) of this title (relating to Approved Courses of Study).

Class hours—Actual contact [Contact] hours of a course [formal class instruction or the equivalent as may be defined and adopted by the advisory council].

Credit hours—Hours of formal class instruction in topics contained in §19.1006 of this title (relating to Approved Courses of Study).

Educational coordinator—The designated person in the Agents' Licensing Section [Agent's License Division] of the State Board of Insurance who works [is designated to work] with the advisory council and administers [in administering] the continuing education program for the State Board of Insurance. The address of the educational coordinator is [., and who may be addressed] as follows: Educational Coordinator, Agents' Licensing Section [Agent's License Division], State Board of Insurance, Mall Code 014-3, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Licensee—Any holder of a license under the authority of the Insurance Code, Article 21.07-1, 21.07-3, 21.07-4, or [Article] 21.14.

Provider—A national or statewide agents' or adjusters' association or a professional association, or a local chapter of a national or statewide agents' or adjusters' association or professional association; an accredited college or university; a proprietary school complying with the definition of a proprietary school as defined in the Texas Proprietary School Act (the Education Code, Chapter 32) and holding a certificate as such from the Texas Education Agency [.; or an education publisher]; or an insurance company authorized to do business in the State of Texas; or an adjusting firm, when providing free courses for its licensed or

appointed agents; or a Texas public school system.

Staff—Persons employed in the Agents' Licensing Section [Agent's License Division] of the State Board of Insurance.

§19.1003. Applicability of Requirements [Requirement].

(a) The continuing education requirements imposed under §19.1004 of this title (relating to Continuing Education Requirements) [requirement] shall apply to all individual licenses from January 1, 1988, unless a licensee is directly exempted by statute or in this subchapter and unless the licensee makes proper application for such exemption and such exemption is granted. Instructions for applying for an exemption may be obtained from the educational coordinator.

(b) The continuing education requirements [requirement] shall not apply to[:]

[(1)] persons who maintain a license under the Insurance Code, Article 21.07-1, solely for the purpose of receiving residual or renewal commissions and are allowed under the statutes governing that license to hold a license for such a limited purpose. As a condition of renewal of the license, such [Such] persons must certify [as a condition of renewal of the license]:

(1) that they have performed none of the acts of an insurance agent as defined in the statute governing such license; and

(2) that the sole reason for maintenance of the license is to receive residuals or renewals. [.]

(c) In addition to the persons described in subsection (b) of this section, continuing education requirements shall not apply to:

(1)[(2)] licensed or unlicensed persons who share in the profits of a local recording agent under the provisions of the Insurance Code, Article 21.14, §3a;

(2)[(3)] those persons holding a license under the authority of the Insurance Code, Article 21.07-1, §4A; [or]

(3)[(4)] nonresident licensees who are subject to continuing education requirements in their home state, provided the residence state recognizes reciprocity with Texas continuing education requirements;

(4) a trainee licensed under provisions of the Insurance Code, Article 21.07-4, §2(a); or

(5) a catastrophe or emergency adjuster licensed under the Insurance Code, Article 21.07-4, §5.

(d) [(c)] Except to the extent that provisions of this subsection specify

requirements different from the requirements under §19.1004 of this title (relating to Continuing Education Requirements) the continuing education [These] requirements under §19.1004 of this title (relating to Continuing Education Requirements) shall apply from January 1, 1990 [January 1, 1988].

(1) The [except that a licensee's] initial liability for continuing education of a licensee licensed under the Insurance Code, Article 21.07-3 or Article 21.07-4 shall be determined in accordance with the provisions of subparagraphs (A)-(D) of this paragraph [as follows].

[(1)] A licensee whose license had an effective date or renewal date within 90 days prior to January 1, 1988, shall be liable for the entire requirement.]

[(2)] Liability for continuing education of all other licensees may be determined by consulting the following subparagraphs of this paragraph.]

(A) If the date the license renews [was first issued or was last renewed] is between [from] January 1, 1990 [January 1, 1986], and [to] May 31, 1990 [March 31, 1986], inclusive, the number of hours of continuing education required before the next renewal is zero.

(B) If the date the license renews [was first issued or was last renewed] is between [from] June 1, 1990 [April 1, 1986], and [to] September 30, 1990 [June 30, 1986], inclusive, the number of hours of continuing education required before the next renewal is zero.

(C) If the date the license renews [was first issued or was last renewed] is between [from] September 1, 1990 [July 1, 1986], and [to] December 31, 1990 [September 30, 1986], inclusive, the number of hours of continuing education required before the next renewal is five hours.

(D) If the date the license renews is after [was first issued or was last renewed] is from October 1, 1986, to [December 31, 1990 [1986], the number of hours of continuing education required before the next renewal and before each subsequent renewal is 15 [10] hours.

[(E)] If the date the license was first issued or was last renewed is from January 1, 1987, to March 31, 1987, the number of hours of continuing education required before the next renewal is 15 hours.

[(F)] If the date the license was first issued or was last renewed is from

April 1, 1987, to June 30, 1987, the number of hours of continuing education required before the next renewal is 20 hours.

[(G) If the date the license was first issued or was last renewed is from July 1, 1987, to September 30, 1987, the number of hours of continuing education required before the next renewal is 25 hours.

[(H) If the date the license was first issued or was last renewed is from October 1, 1987, to December 31, 1987, the number of hours of continuing education required before the next renewal is 30 hours.]

(2)[3] All licenses under the Insurance Code, Article 21.07-1 or Article 21.14, issued or renewed on or after October 1, 1989 [January 1, 1988], carry a continuing education requirement of 30 hours per two-year renewal period unless otherwise exempted. All licenses under the Insurance Code, Article 21.07-3 and Article 21.07-4, renewed after January 1, 1991, shall be liable for 15 hours of continuing education per one-year renewal period.

(3)[(4)] Solicitors for local recording agents must determine their requirement from subparagraph (A) and subparagraph (B) of this paragraph.

(A) The provisions of clauses (i)-(iv) of this subparagraph apply to a solicitor's original license.

(i) If there are six or fewer [from zero-six] months between the issue date of the solicitor's license and the renewal date of the local recording agent's license, the solicitor's initial liability for continuing education shall be zero hours.

(ii) [(B)] If there are 12 or fewer months, and more than six [from seven-12] months, between the issue date of the solicitor's license and the renewal date of the local recording agent's license, the solicitor must earn 10 continuing education hours.

(iii) [(C)] If there are 18 or fewer months, and more than 12 [from 13-18] months, between the issue date of the solicitor's license and the renewal date of the local recording agent's license, the solicitor must earn 20 continuing education hours.

(iv) [(D)] If there are 24 or fewer months, and more than 18 [from 19-24] months, between the issue date of the solicitor's license and the renewal date of the local recording agent's license, the solicitor must earn 30 continuing education hours.

(B) When a solicitor moves from one local recording agent to another,

subparagraph (A) of this paragraph may be used to calculate the required continuing education hours, but details must be furnished in writing with the solicitor's renewal.

§19.1004. Continuing Education Requirements.

(a) A [The] licensee under the Insurance Code, Article 21.07-1 or Article 21.14, must successfully complete not less than 30 class hours of continuing education in each 24-month period beginning on the issue date or last renewal date of the license and ending on the expiration date of the license or of the renewed license except that a [as follows.]

[(1) A licensee under the Insurance Code, Article 21.07-1, in the licensee's first year of licensure shall provide certification upon the first renewal of that license to the board of successful completion of at least 15 class hours done within the first year following the issuance of the license and 15 additional class hours.]

[(2) A] Texas local recording agent who does not hold a license under the Insurance Code, Article 21.07-1, must provide certification to the board only that 15 class hours have been successfully completed during the year immediately prior to the first renewal of the agent's [that] license under the Insurance Code, Article 21.14. After the first renewal, or if the licensee holds a license under the Insurance Code, Article 21.07-1, the local recording agent is subject to the full requirement as described in this subchapter.

(b) If individual licenses are held both under the Insurance Code, Article 21.07-1, and under the Insurance Code, Article 21.14, only 30 class hours must be completed in each 24-month period, and these may be taken entirely from the list of courses approved for either license [or may be divided between the lists in any way]. The intent of this subchapter [chapter that will be enforced] is that each licensee receive at least 30 hours of continuing education in each 24-month period.

(c) A licensee under the Insurance Code, Article 21.07-3 or Article 21.07-4, must successfully complete not less than 15 class hours in each 12-month period beginning on the issue date or last renewal date of the license and ending on the expiration date of the license or of the renewed license.

(d) A licensee under the Insurance Code, Article 21.07-4, must successfully complete three hours of the required 15 hours in courses dealing with consumer protection as defined in the Insurance Code, Article 21.07-4, §7A.

§19.1005. Licensee's Failure to Comply. Except for adjusters licensed

under the Insurance Code, Article 21.07-4, a licensee has filed an incomplete renewal application if the licensee fails [Failure of a licensee] to provide satisfactory evidence of successful completion of the required [number of] hours of continuing education at the time of license renewal, in the absence of a valid exemption under the Insurance Code, Article 21.07-1, §3A, or [and] Article 21.14, §5B, or as set forth in this subchapter. Licensees who have filed an incomplete renewal application lose the authority granted under that license if they do not submit documentation of continuing education courses, taken prior to the renewal date, within 30 days of the license renewal date. An adjuster under the Insurance Code, Article 21.07-4, must retain satisfactory evidence of successful completion of the required hours for at least four years. Any licensee who does not comply with the continuing education requirement may be subject to the refusal of renewal of their license(s) in accordance with the Insurance Code, Articles 21.07-1, §12; 21.07-3, §12; 21.07-4, §17; and/or 21.14, §16 [is a ground for refusing renewal of the license in accordance with the provisions of the Insurance Code, Article 21.07-1, §12, or Article 21.14, §16. No extensions of time will be granted. A licensee whose license renewal is refused shall not be entitled to file another application of the same type within one year from the effective date of the refusal].

§19.1006. Approved Courses of Study.

(a) An approved course of study is one that has been submitted to the board for approval on SBI Form LDCE-002, has been reviewed by staff, and has been placed on the list of approved courses. The [, except that the] advisory council shall recommend [determine] the hours of credit to be given for the several national examination certification programs. These programs include, but are not limited to, CIC, CLU, CPCU, and LUTC [, and no further action on the part of staff or provider shall be required for approval of these courses]. Further, any insurance course that is part of the degree curriculum of an accredited college or university shall be awarded 15 hours of continuing education credit for each semester hour earned during the renewal period for which credit is desired.

(b) The list of approved courses shall clearly designate whether the courses require class attendance or not, and each license to which the course hours may be applied. The list shall be available to all interested parties on request made to the educational coordinator.

(c) To be placed on the list of approved courses, a [considered for approval, the] course of study must meet the following requirements, which apply to

all courses, whether lecture-seminar, correspondence, video, audio, computer-based, or any other method of presentation.

(1) The content of the course must be intended to increase a [the] licensee's knowledge and understanding of insurance principles and coverages; applicable laws; rules and regulations promulgated by the board; recent and prospective changes in coverages, law, regulation, and practice; management of the licensee's insurance business; [or] the duties and responsibilities of the licensee [agent]; or consumer protection.

(2) The proposed teaching method must reflect currently acceptable educational practice and must be appropriate to the subject matter and audience.

(3) At the time a student pays for a course, or no later than the start time of the course, the provider must furnish students with a written copy of the latest course outline on file with the Continuing Education Unit of the State Board of Insurance. This outline shall bear the statement "Report any deviation from this outline to the State Board of Insurance, Agents' Licensing Section 014-3, CE Unit, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998; (512) 322-3517."

(4) At the time a student pays for a course, or no later than the start time of the course, the provider must furnish each student with a written statement of all the requirements the student must meet in order to receive credit for a course. This statement shall not be at variance with the stated method of completion listed on the application for course approval, SBI Form LDCE-002. This outline shall bear the statement "Report any deviation from these requirements to the State Board of Insurance, Agents' Licensing Section 014-3, CE Unit, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998; (512) 322-3517."

(5) Providers of any course, whether it be lecture, seminar, correspondence, video, audio, computer-based, or any other method of presentation or instruction, shall not read from a prepared script or text or allow such reading; nor shall a provider play a video or audio recording featuring such reading during the instruction of any course.

(6) At the time a student pays for a course, or no later than the start time of the course, the provider shall furnish the student with all written material needed to successfully complete the course.

(7) All correspondence, audio, video, computer-based, or mixed presentation mode courses shall have a

previously approved workbook or examination that can be completed only by a student who has gone through the instruction of the course.

(8) Provisions for the answering of student questions at any time throughout the course of instruction must be made in any lecture or seminar type course, or in any other presentation with more than 10 attendees.

(9) No provider shall allow a student to attend more than eight hours of lecture or instruction in any 24-hour period.

(10) Successful completion of the course by a licensee must be verifiable to the satisfaction of staff.

(A) If attendance is used as the only determiner of completion of a lecture or seminar course, and if the total class hours are to be taken within a 36-hour period, then 100% attendance is required. If the course is spread out over a longer period than 36 hours, then a minimum of 85% attendance is required. The provider's records must show roll checks that adequately support all certifications issued.

(B) Staff may formulate guidelines for course approval and for retention of course approval. These guidelines may contain other requirements pertaining to measuring completion of a course.

(C) A correspondence course must be completed by a formal final examination approved by staff, and administered in accordance with guidelines prescribed by staff.

(D) A course which contains both classroom and correspondence course elements shall be governed by the rules and guidelines applying to classroom or lecture courses. There shall be no more than one hour of out-of-class credit available for each one hour of in-class credit.

(d) If approval is granted, the [The] number of class hours for a course of study shall be assigned by staff. A [in accordance with guidelines laid down by the advisory council, and any] decision as to the number of hours assigned to a particular course by staff may be reviewed by [appealed to] the advisory council. A recommendation may be made by the advisory council, on request of [by] the provider of the course. Written [by making written] application must be directed to the Chairman, Continuing Education Advisory Council, in care of State Board of Insurance, Agents' Licensing Section 014-3 [Agent's License Division], 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

(e) Approval, if granted, is contingent on the provider's signing and returning to the educational coordinator the conditional approval letter (SBI Form LDCE-0012). Approval is contingent on compliance with that letter and on continued compliance with the other terms under which that course was approved. If staff ascertains that a course is not in compliance with those terms or with any of the provisions of this subchapter, the educational coordinator shall decertify the course.

(1) The educational coordinator shall, by certified letter, notify the provider of the decertification, and the decertification shall be effective five days after the date upon which that letter is received.

(2) The letter of decertification shall state the reason for the decertification and shall instruct the provider to cease advertising the course or offering the course for continuing education credit.

(3) The course list published by the agent's licensing section of the State Board of Insurance shall have a section entitled, "COURSES DECERTIFIED FOR NONCOMPLIANCE", and in that section shall be listed the courses and the providers of those courses that have been decertified during the previous four months.

(4) The educational coordinator will endeavor to provide notice of a course decertification to all interested parties including, but not limited to, agents' or adjusters' associations, all providers, the Texas Education Agency, and certain insurers, as soon as the action is effective.

(5) If a provider has had one or more courses decertified and wishes to have another course certified, such provider must request a public hearing to show why an additional course approval for the provider would be in the best interests of the insurance community and the citizens of the State of Texas.

(f) Approval of a course is valid for no more than two years from the date the original conditional approval letter was mailed to the provider or other notice of conditional approval delivered. At the end of two years, staff may require that a total resubmission of the course be made or staff may issue a new conditional approval letter, from the date of which the new conditional approval period starts.

(g) The educational coordinator shall promptly notify the Texas Education Agency, Division of Proprietary Schools, of any complaints received regarding the operation of a proprietary school that offers any course approved

under the provisions of this subchapter, and shall promptly notify the Texas Education Agency of any official action taken under this subtitle against a proprietary school.

(h) In order for a course to retain conditional approval [remain on the list of approved courses], the provider must [agree]:

(1) [to] maintain detailed records of attendance and enrollment for a minimum of four years and [to] make these records available at a time and place chosen by staff. These records must clearly indicate the name, address, and phone number of each student; the course taken and the course date; the student's attendance (must be further verifiable from roll records of the specific class); the student's test grade(s) or other information to support the provider's selected method of determining course completion; and any additional information required by staff pertaining to either classroom or correspondence courses [to the board at the time and place of the board's choosing]; [and]

(2) [to] update course material as required by changes in statute, rule, and [or] practice, or by staff review;

(3) cooperate with such evaluation or monitoring system as may be prescribed by staff;

(4) provide students who meet the requirements of completion as set forth herein and recorded on the course approval application, SBI Form LDCE-002, with a certificate of completion within 10 days of the completion date;

(5) meet on a continuing basis all other requirements pertaining to courses in this subchapter and conform with all staff guidelines pertaining to courses;

(6) prior to its use, furnish staff with all advertising pertaining to an approved course for approval. Use of unapproved advertising shall result in the denial of credit for any course dates contained in such advertising and the dishonoring of any certificates issued by the provider for courses and dates contained in such unapproved advertising;

(7) furnish staff with all new dates and locations at least 10 days prior to the starting date of the class. Failure to so notify shall result in the denial of approval for such class and the dishonoring of all certificates issued by the provider for such dates and courses; and

(8) furnish staff with a new course approval application, SBI Form LDCE-002, and all attachments, for any change in course content or structure. In the absence of such notification at least 20 working days in advance of the course date, the provider will be presumed to be

offering an unapproved course and no credit shall be allowed.

(i)[(f)] A particular course may not be used by a licensee for continuing education credit for a specific license more than once in any one reporting period for that license. d

(j)[(g)] A licensee who teaches an approved course may receive 100% of the class hour credit toward meeting the continuing education requirement, but this credit may not be used more often than once in any one reporting period.

(k)[(h)] The following types of courses shall not be considered for approval:

(1) a course that is used, or because of its fundamental nature could be used, or a course based on a text that is used, or because of its fundamental nature could be used, for pre-license training or qualifying examination preparation;

(2) any course or text used or approved for the local recording agents' [agents] educational requirement under the Insurance Code, Article 21.14, §5a, or course or text that because of its fundamental nature could be so used;

(3) any course that is used or approved for any adjuster training program certified by the State Board of Insurance under Article 21.07-4, §10, or course or text that because of its fundamental nature could be so used;

(4)[(3)] courses teaching general accounting or other general business skills, speed reading, sales or selling, or computer use;

(5)[(4)] courses in motivation, goal-setting, time management, or communication;

(6)[(5)] meetings held in conjunction with the regular business of the licensee or meetings whose character is primarily recreational or social, except that this paragraph will not prevent consideration of education programs given in conjunction with agents' or adjusters' association meetings; or

(7)[(6)] training relating to the product or marketing practices of a specific company unless such course is provided by an insurance company, credit is given only to that company's appointed agents and employees, and no charge is made for the training.

§19.1007. Licensee's Responsibility for Record Keeping. Licensees are responsible for maintaining their own continuing education records. This includes preserving for four years copies of the certifications received upon completion of an approved course, and copies of the summary reports, SBI Form LDCE-003, filed with the certificates at license

renewal. The accuracy of a licensee's records is subject to verification at any time, as more particularly set forth in §19.1008 of this title (relating to Records and Audit).

§19.1008. Records and Audit.

(a) The provider shall furnish to each licensee who successfully completes an approved course a certificate of completion, SBI Form LDCE-001, and [shall make available] a blank SBI Form LDCE-003, Licensee's Continuing Education Summary Report. The certificate of completion shall include the following information: the licensee's full name, address, State Board of Insurance file number and license type, the course provider's name and the State Board of Insurance course number, the date of successful completion, the number of course hours credit being requested, and the signature of an approved [approval] official of the provider.

(b)-(c) (No change.)

(d) [If such records are audited or reviewed and are suspected of being falsified, incomplete, or in any way questionable, the licensee or provider shall have 30 days in which to correct the discrepancies or submit new documentation.

[(e) If compliance has not been made within the 30-day period, the license may be revoked or not renewed, and if the license is revoked or not renewed, the licensee shall not be entitled to file another application for a license of the same type within one year from the effective date of the revocation or non-renewal.]

[(f) If a provider's records are found to be in violation of, or not in compliance with, this subchapter or with the conditional approval letter [In the case of a provider, if the required corrections have not been taken by the end of the 30-day period], approval may be withdrawn for any courses administered by the provider and that provider may be prevented from resubmitting or submitting any courses for approval for a period of 180 days. At the end of the period, staff may require that the provider apply for a public hearing to determine if the submission of courses by the provider would serve the best interests of the insurance community or the citizens of the State of Texas.

§19.1009. Texas Continuing Education Advisory Council.

(a) The board shall create an advisory council to furnish the board with information and assistance in the conduct of the continuing education program for agents licensed under the Insurance Code, Article 21.07-1, 21.07-3, 21.07-4, or [under the Insurance Code, Article] 21.14.

(b) The council shall be appointed by the board, and it serves at the board's

pleasure. The board may, from time to time, make additional appointments to replace members who have resigned.

(c) The composition of the council shall be as follows: representatives of the several segments of the insurance community including, but not limited to, members of home office and agency force of legal reserve life insurance companies and companies writing property and casualty insurance, [and] educators and/or educational administrators, claims handlers and/or managers; and managing general agents. The educational coordinator or another person designated by the educational coordinator shall be an ex officio member of the council, participating fully, but unable to vote.

(d) The primary role of the council shall be advisory [, and it shall offer advice as to the following:

(1) method of course approval;

(2) qualification of course instructors/graders; and

(3) method of establishing hourly equivalents for courses not involving class attendance].

(e) The council shall meet at least quarterly during the first year after adoption of this subchapter, and at least semi-annually thereafter. At the first meeting of the advisory council, the council shall do the following:

(1) (No change.)

(2) **recommend** [develop] a set of guidelines for use by the educational coordinator in approving courses and assigning credit hours to courses; **and**

(3) **recommend** [assign] credit hours to **allow** for LUTC, CIC, CLU, and CPCU course parts leading to certification; and

[(4) at that time or later designate any type of course that shall not receive approval in addition to those excluded by these sections].

(f) (No change.)

(g) **At a subsequent meeting, the council may recommend any type of course that shall not receive approval in addition to those excluded by the provisions of this subchapter.** [The council may amend its guidelines as it sees fit. All rules and guidelines that this council passes shall be deemed procedural guidelines, not rules binding on the State Board of Insurance.]

(h) At all meetings after the first, the council **may review courses** [will hear appeals] from providers who are not satisfied with hours assigned to their courses, and when possible, **offer advice** [settle these appeals] at the time of review [hearing them], or at least within 30 days [, providing the educational coordinator with a written decision which shall be transmitted promptly to the provider].

(i) (No change.)

§19.1010. Distribution of Rules and Attachments.

[(a)] A copy of this subchapter as promulgated by the State Board of Insurance shall be given to any interested person upon request made to the educational coordinator.

[(b) A copy of the Insurance Code, Article 21.07-1, §3A, and Article 21. 14, §5b, shall be distributed with every copy of this subchapter.]

§19.1011. Forms Adopted by Reference. The State Board of Insurance adopts by reference certain forms to be used in conjunction with the administration of this subchapter. These forms are published by the State Board of Insurance and copies of the forms may be obtained from the Educational Coordinator, Agents' Licensing Section [Agent's License Division], State Board of Insurance, Mail Code 014-3, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. Licensees and providers shall use such forms as are required by the provisions of this subchapter. The forms adopted by reference are specifically identified as follows:

(1) (No change.)

(2) SBI Form LDCE-002, Request for Approval of Continuing Education Course; [and]

(3) SBI Form LDCE-003, Licensee's Continuing Education Summary Report; and [.]

(4) SBI Form LDCE-0012, Conditional Approval Letter.

Issued in Austin, Texas, on June 12, 1990.

TRD-9006121

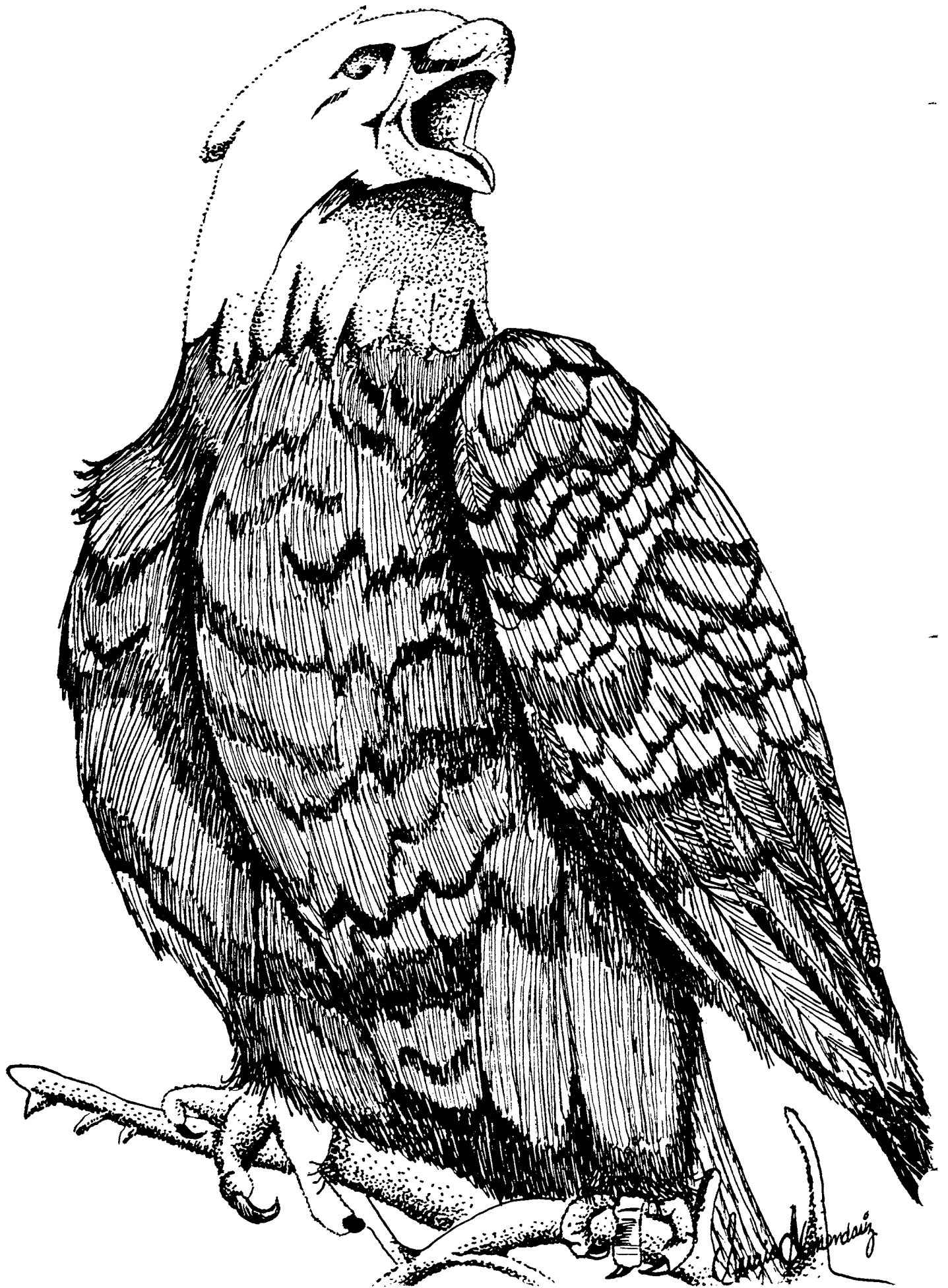
Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: June 13, 1990

Expiration date: October 11, 1990

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





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 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Catastrophe Property Insurance Association

Inspection for Windstorm and Hail Insurance

• 28 TAC §5.4602, §5.4603

The State Board of Insurance proposes amendments to §5.4602 and §5.4603, concerning the windstorm inspection manual for windstorm and hail insurance coverage by the Texas Catastrophe Property Insurance Association (the TCPA). The amendments are necessary to modify what has proven to be an inefficient system of collecting fees, to provide for inspection of mobile home tie-down methods upon request of the TCPA, and to list non-structural repairs for which inspections are deemed unnecessary. The amendment to §5.4602(2) changes paragraph (E) and adds new paragraph (G). Paragraph (E) as proposed provides a new schedule of fees for inspections made by the State Board of Insurance for certification of compliance with approved building construction requirements and provides that the fee must be paid in advance of an inspection. New paragraph (G) provides that the State Board of Insurance will inspect mobile homes to survey the tie-down method for mobile homes seeking insurance coverage through the TCPA, if requested to do so by the TCPA. The board would not inspect a mobile home to determine compliance with any required construction standards for the mobile home itself. The amendment to §5.4602(6) adds paragraph (E), which lists non-structural repairs that could be made to non-engineer designed buildings or structures without requiring inspection by the board for certification or recertification for compliance with building construction requirements. The amendment to §5.4603 adopts by reference a form entitled Form WPI-MH-1, Mobile Home Tie-Down Survey, for use in connection with the provisions of new §5.4602(2)(G).

Lyndon Anderson, deputy insurance commissioner for property insurance, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for local government as a result of enforcing or administering the sections. There will be fiscal implications for state government. The

proposed new fee schedule in §5.4602(2)(E) is expected to result in a reduction in revenue for state government of \$225,000 over the five-year period. Mobile home tie-down inspections, as described in §5.4602(2)(G), are expected to cost state government \$750 per year or \$3,750 over the five-year period. There will be no effect on local employment or local economy.

Mr. Anderson 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 greater efficiency of the windstorm inspection program which will improve the availability of insurance, thus resulting in an increase in building in the catastrophe area. There is no anticipated economic cost to persons who are required to comply with the proposed sections as the proposed new fee schedule represents a reduction in cost to persons who must obtain inspections.

Comments on the proposal may be submitted to Lyndon Anderson, Deputy Insurance Commissioner, Property Insurance, State Board of Insurance, Mail Code 011-1, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments are proposed under the Insurance Code, Article 21.49, §6A, which authorizes the State Board of Insurance to promulgate rules and forms to effect inspection for windstorm and hail insurance and certification of insurability for coverage by the Texas Catastrophe Property Insurance Association.

§5.4602. Windstorm Inspection Manual. The following paragraphs are applicable to inspections for compliance with building specifications on all structures that are constructed or repaired, or to which additions are made, on or after January 1, 1988, and that are to be considered insurable property as defined in the Insurance Code, Article 21.49, for windstorm and hail inspection written by the Texas Catastrophe Property Insurance Association (the association).

(1) (No change.)

(2) Operation.

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

(E) Inspections required to be made by the State Board of Insurance for the certification of compliance with approved building construction requirements [A fee of \$35 for each of the

three inspections] must be in accordance with the schedule of fees shown below. The required inspection [paid to the board prior to issuance of a certificate of compliance. An additional \$35 fee will be charged for a fourth inspection of mechanical structures, if required. An inspection fee will not exceed \$140. The] fee must be paid by check or money order [after the final inspection. Payment must be] made payable to the State Board of Insurance in advance of any on-site inspection. Payment as specified must accompany the initial application for inspection and should be [,] mailed to the [Windstorm Inspection Section,] State Board of Insurance, MC 9999, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. On-site inspections will not be made prior to payment of the appropriate inspection fee [The assigned file number shall be indicated with each payment. Upon receipt of final payment, a certificate of compliance shall be mailed to the owner or contractor].

(i) New buildings. For all required inspections from the commencement of construction until completion, the fee is \$100.

(ii) Other structures or additions. For all required inspections for any additions to new or existing structures, the fee is \$35.

(iii) Repairs. For all inspections for repairs to any new or existing building or structure, there is no charge.

(F) (No change.)

(G) The Windstorm Inspection Section of the State Board of Insurance will make inspections of mobile homes to survey the tie-down method used for those mobile homes seeking insurance through the association.

(i) Inspection of tie-down methods used on mobile homes will only be made at the request of the association.

(ii) Inspection of tie-down methods for mobile homes is a report only and does not determine if the property is otherwise insurable through the association. The report is to be made to the association and will be provided on State Board of Insurance Form WPI-MH-1.

(iii) The State Board of Insurance will not inspect the mobile home to determine compliance with any required construction standards of the mobile home itself.

(iv) If underskirting or other obstructions prevent a proper inspection, such underskirting or obstructions must be removed from the mobile home. The association shall bear the responsibility to have the underskirting or obstructions removed.

(3)-(5) (No change.)

(6) Inspection standards.

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

(D) The following repairs or other procedures done to non-engineer-designed buildings or structures do not require inspection by the State Board of Insurance for the purposes of certification or recertification for compliance with building construction requirements:

(i) repairs to roofs covering less than 100 square feet (one square);

(ii) repairs to gutters;

(iii) door and window replacement (if no framing is involved);

(iv) garage door installation or replacement (if no framing is involved);

(v) repairs to wheelchair ramps;

(vi) fascia replacement;

(vii) repairs to porch and balcony railings;

(viii) repairs to steps;

(ix) protective measures before a storm

(x) temporary repairs after a storm;

(xi) leveling or procedures done to existing foundations, other than repairs;

(xii) leveling and repairs to an existing slab on grade foundation, unless wall anchorage is being altered or repaired;

(xiii) repairs to pier and beam foundations if no more than four piers are replaced;

(xix) fence repairs;

(xv) repairs to detached carports, patio covers and pool covers, garages, gazebos, and other outbuildings unless specifically insured;

(xvi) painting and carpeting, plumbing and electrical repairs;

(xvii) repairs to slabs poured on the ground for patios (including slabs under houses on pilings); and

(xviii) replacement of light bulbs and glass covers.

(7) (No change.)

§5.4603. Forms for Windstorm Inspections.

(a) The State Board of Insurance adopts by reference the following forms for use in windstorm inspections.

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

(11) Foundation Certificate, Form WPI-10 as amended March 1, 1990; [and]

(12) Re-Roofing Application, Form WPI-11; and

(13) Mobile Home Tie-Down Survey, Form WPI-MH-1.

(b) (No change.)

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

Issued in Austin, Texas, on June 12, 1990.

TRD-9006097

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: July 20, 1990

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 H. Interim Reimbursement Program

• 31 TAC §§334.301-334.322

The Texas Water Commission proposes new §§334.301-334.322, concerning the implementation of a reimbursement program for clean-ups of petroleum product releases from certain underground and aboveground storage tanks. Interim rules to implement this program were adopted on an emergency basis by the commission on January 17, 1990, and published in the January 26, 1990, issue of the *Texas Register* (15 TexReg 403). The emergency sections were adopted as 31 Texas Administrative Code (TAC) §§334.501-334.521. These new sections are proposed as §§334.301-334.322. The purpose of the renumbering is to organize all subchapters of

31 TAC Chapter 334 in successive order.

The new sections are proposed to implement the provisions of House Bill 1588, 71st Legislature, 1989, which amended Senate Bill 779, 70th Legislature, 1987 (the Texas Water Code, §26.341, et seq). Senate Bill 779 created a regulatory program for underground storage tanks. House Bill 1588 created a Groundwater Protection Clean-up Program which applies to underground and aboveground tanks containing petroleum products. House Bill 1588 provides for a commission-sponsored remediation of sites and reimbursement of responsible parties who clean up sites on their own initiative.

Proposed Subchapter H establishes a reimbursement program for responsible party remediation. It applies to those eligible owners and operators of petroleum storage tanks who have performed remedial activities on sites on or after May 31, 1989, but who commenced or will commence remedial activities on or before the effective date of the final rules which will succeed these rules. The commission anticipates that these final rules will be proposed as Subchapter G of Chapter 334, concerning the groundwater protection clean-up program, and that Subchapter G will be proposed in the fall of 1990.

Section 334.301 concerns the applicability of this subchapter. It provides that Subchapter H covers only those releases reported to the executive director on or before the effective date of final rules adopted to replace Subchapter H. Applications for reimbursement filed under this subchapter must be filed on or before the effective date of Subchapter G, which will succeed these interim rules, pursuant to 31 Texas Administrative Code (TAC) §334.303, concerning time to file application-interim period. If a person fails to file before that time, §334.301 of these proposed rules states that he is not prevented from filing under future rules.

Section 334.301 also provides that corrective action performed on or after May 31, 1989, may be subject to reimbursement and that corrective action performed before May 31, 1989, may only be counted toward the first \$10,000 of corrective action for which the owner and operator are responsible. Under §334.301, current owners or operators may be eligible for reimbursement, as well as past owners or operators who performed corrective action on or after May 31, 1989.

Section 334.301 also address the operative date for this subchapter. Subsection (h) states that applications for payment from the petroleum storage tank remediation fund may be filed and processed according to its terms on or after July 17, 1990. Expenditures made pursuant to these rules on or after July 17, 1990, are authorized and ratified. Subsection (h) further states that costs incurred on or after July 17, 1990, are subject to this subchapter for the purposes of determining allowable costs. Costs incurred before July 17, 1990, were addressed in the emergency Subchapter H adopted by the commission on January 17, 1990, and published in the January 26, 1990, issue of the *Texas Register* (15 TexReg 403).

Section 334.302, concerning general conditions and limitations regarding reimbursement-interim period, explains that

in order for corrective action to be considered for reimbursement, it must be performed in response to a release which penetrates beyond the excavation zone of a tank and which is confirmed by the executive director unless the corrective action was required by act of the Texas Water Commission. Petroleum storage tanks are those which contain petroleum products, as that term is defined in 31 TAC §334.322, concerning Subchapter H definitions. The term "confirmed" is defined in proposed §334.322, concerning Subchapter H definitions. It is the burden of the person claiming monies under this subchapter to prove that an eligible release has occurred. Corrective action which is performed before or after confirmation may be eligible for payment or reimbursement, if all other conditions of this subchapter are met. The term "release" is defined in 31 TAC §334.2, concerning definitions, and includes the term "spill," also defined in §334.2. A release includes a spill which results from the filling of product into an underground storage tank, which includes the tank and associated piping, not into an underground storage tank system, which includes other related systems. Both of those terms are also defined in §334.2.

Pursuant to §334.302 of these sections, reimbursement will not be made for \$10,000 of otherwise allowable costs, nor will reimbursement be made for corrective action costs which exceed \$1 million per occurrence. This section also lists other limitations on the payment of monies under this subchapter. Finally, §334.302 addresses the type of authorization necessary for payments made to the agents of owners and operators.

Since reimbursement under this subchapter is limited to set amount per occurrence, how an occurrence is defined is a significant issue. Section 334.311, concerning determining the number of occurrences-interim period, provides for a determination on the number of cases to be based on when the releases at a facility are discovered, whether the contamination at different locations can be remediated separately, and whether the determination on the number of occurrences results in the efficient use of the petroleum storage tank remediation fund and effective protection for health and the environment.

Section 334.308, concerning allowable costs-interim period, lists the general types of expenses which may be considered for reimbursement under this subchapter and which types of expenses will not be considered for reimbursement. Costs which are allowable are not limited in all cases to costs of corrective action performed at the facility where the release occurs, however all corrective action must be performed in response to a release of petroleum products from a petroleum storage tank owned or operated by the eligible owner or operator making a claim for reimbursement. All costs must be reasonable and necessary. Section 334.309, concerning reasonable costs-interim period, describes what criteria shall be used to determine the reasonableness of costs.

Who may file an application under this subchapter and what information may be required of the applicant for reimbursement are addressed in §§334.304-334.307, concerning who may file application-interim

period; where and how documents must be filed-interim period; form and contents of application-interim period; and technical information required-interim period.

Section 334.310, concerning requirements for eligibility-interim period, lists the requirements for an owner or an operator of a petroleum storage tank to be eligible to receive reimbursement under this subchapter.

Review of an application for reimbursement by the executive director, payment of claims, protests by the applicant on the amount approved for payment by the executive director, and the procedures for resolving payment disputes are addressed in §§334.312-334.317, concerning review of application by executive director-interim period; executive director's fund payment report-interim period; protest of fund payment report-interim period; mediation of dispute-interim period; formal petition-interim period; and hearing by commission-interim period. House Bill 1588 gives the commission the option of reimbursing the owners and operators or paying contractor directly. These sections contemplate payment of owners or operators or their agents only. Comments from the public are invited regarding direct payment of contractors.

The continuing responsibilities and enforcement liabilities of the owner and operator of underground and aboveground storage tanks notwithstanding the reimbursement program created in this subchapter are outlined in §334.319 and §334.320, concerning administrative penalties and other actions-interim period; and responsibilities of owners and operators-interim period). The authority of the commission to seek recovery of costs where money is expended for corrective action is addressed in §334.318, concerning recovery of costs-interim period.

Section 334.321, concerning corrective action by the commission-interim period, describes the circumstances under which the executive director may undertake corrective action at a facility. This section further provides that corrective action costs incurred 30 days after the executive director issues notice of his decision to take corrective action will not be reimbursable under this subchapter.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The effect on state government will be an increase in administrative costs of approximately \$1,300,000 per year in fiscal years 1990-1994. The average cost of a petroleum storage tank remediation project is anticipated to be approximately \$75,000. The tank owner or operator must meet the first \$10,000 of the remediation costs. State government agencies operating facilities subject to the provisions of these sections will realize a benefit of approximately \$65,000, therefore, for each site at which remediation of a leaking petroleum storage tank is subject to reimbursement under this subchapter. Local governments will realize the same benefit for each occurrence eligible for reimbursement of remediation expenses.

The new sections will have identical fiscal implications for small businesses, equivalent

to approximately \$65,000 per facility for each eligible occurrence of contamination for which costs are reimbursable. It is estimated that the total value of reimbursements made to all qualified tank owners will be approximately \$191 million in fiscal years 1991-1994.

Mr. Bourdeau also has determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvements in: the regulation of petroleum storage tank facilities, the remediation of sites contaminated by leaking storage tanks, the protection of the quality of the groundwater resources of the state, and the enforcement of the provisions of the Texas Water Commission.

Horace Goodson, director, economic research and analysis, Texas Employment Commission, has determined that although implementation of this program may affect employment slightly in some areas of the state, it appears at this time that it would have little or no effect on total employment. Therefore, there will be no significant impact on overall employment in Texas cities and counties which would result from the rule changes.

Comments on the proposal may be submitted to Carlos Celestino, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m., 30 days after the date of publication. To facilitate public comments on the proposed sections, the commission has scheduled a public hearing to receive such comments in Room 118 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, on Thursday, July 12, 1990, at 9 a.m. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

The new sections are proposed pursuant to Texas Water Code, §5.103, which gives the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and pursuant to the Texas Water Code, §26.341, et seq, which establishes a ground water protection cleanup program authorizing the commission to reimburse the owners and operators of petroleum storage tanks for the expenses of corrective action taken in response to releases from those tanks.

§334.301. Applicability of this Subchapter.

(a) Authorization for reimbursement. This subchapter authorizes the reimbursement of the expenses of corrective action taken in response to a release of petroleum products from a petroleum storage tank which is subject to regulation under Subchapter D of this Chapter (relating to Release Reporting and Corrective Action).

(b) Deadline for commencing corrective action. This subchapter applies only under the following conditions:

(1) the release or releases which necessitated the corrective action were reported to the executive director on or before the effective date of the rules adopted to succeed this interim subchapter;

(2) the release is confirmed by the executive director; and

(3) initial release abatement, an assessment, or remediation has begun at the site on or before the effective date of the rules adopted to succeed this interim subchapter.

(c) Expenses considered for payment-time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund are limited to expenses of corrective action which was performed for the owner or operator on or after May 31, 1989.

(d) Expenses for work performed prior to May 31, 1989. Subject to the other requirements of this subchapter, expenses for corrective action performed prior to May 31, 1989, may qualify toward the \$10,000 of corrective action expenses which the applicant is required to pay under §334.302(c)(1) of this title (relating to General Conditions and Limitations Regarding Reimbursement-Interim Period). Expenses for corrective action performed prior to May 31, 1989, are not subject to reimbursement or payment.

(e) Petroleum storage tanks only. This subchapter applies only to those underground and aboveground storage tanks which contain petroleum products, as defined in §334.322 of this title (relating to Subchapter H Definitions).

(f) Limitation. This subchapter shall not be construed to authorize reimbursement or payment from the petroleum storage tank remediation fund in situations other than those described in subsection (a) of this section.

(g) Eligibility under other rules. An owner or operator of a petroleum storage tank who is not subject to this subchapter or who does not qualify as an eligible owner or operator under this subchapter is not automatically precluded from qualifying under any other rules which the commission may adopt to implement House Bill 1588, however:

(1) any person seeking reimbursement or assistance under this subchapter must meet the requirements of this subchapter; and

(2) any person seeking reimbursement or assistance under any other rules which the commission may adopt must meet the requirements of those rules.

(h) Operative date for this subchapter. This subchapter applies to actions taken on and after July 17, 1990, as follows.

(1) This subchapter authorizes applications for payment from the petro-

leum storage tank remediation fund to be filed and processed pursuant to its terms on and after July 17, 1990, and ratifies any actions relating to filing and processing applications taken in accordance with this subchapter.

(2) This subchapter authorizes the executive director to make payments pursuant to its terms from the petroleum storage tank remediation fund on and after July 17, 1990, and ratifies any payments made in accordance with this subchapter.

(3) All costs incurred in the course of performing corrective action which are incurred on or after July 17, 1990, will be subject to the terms of this subchapter for the purposes of determining whether those costs are allowable.

§334.302. General Conditions and Limitations Regarding Reimbursement-Interim Period.

(a) In order to be considered for reimbursement under this subchapter, corrective action must be performed either as provided in subsection (b) of this section or in response to a release which:

(1) results in contamination which penetrates beyond the excavation zone of the tank system and which is above background levels; and

(2) is ultimately confirmed by the executive director, either before or after corrective action commences, provided that it shall be the burden of the person claiming monies under this subchapter to show that a release which is eligible for reimbursement occurred.

(b) Subsection (a)(1) and (2) of this section do not apply if the corrective action is specifically required by an order of the commission, or a written request or confirmation by the executive director.

(c) No payments shall be made by the commission under this subchapter for:

(1) \$10,000 of corrective action costs per occurrence, which the executive director may apportion in the case of multiple claimants as provided in §334.313(f) of this title (relating to Executive Director's Fund Payment Report-Initial Period);

(2) any expenses for corrective action which exceed one million dollars per occurrence; or

(3) any expenses relating to compensation for bodily injury or property damage.

(d) No expenses for which reimbursement is claimed under this subchapter and no expenses which are to be applied to the \$10,000 of corrective action described in subsection (c) (1) of this section shall be subject to reimbursement or applied to the 10,000 unless the following conditions have been met:

(1) an application for reimbursement must be filed by the owner or operator of a petroleum storage tank or his duly authorized representative, as required by §334.304 of this title (relating to Who May File Application-Interim Period);

(2) the application has been filed within the time prescribed in §334.303 of this title (relating to Time to File Application-Interim Period);

(3) the owner or operator seeking reimbursement must be an eligible owner or operator, as defined in §334.322 and §334.310 of this title (relating to Subchapter H Definitions and Requirements for Eligibility-Interim Period);

(4) the expenses for which reimbursement is sought, and those which are to be applied to the \$10,000 of corrective action described in subsection (c)(1) of this section must be allowable costs, as defined in §334.308 of this title (relating to Allowable Costs-Interim Period);

(5) the allowable costs for which reimbursement is sought and those which are to be applied to the \$10,000 of corrective action described in subsection (c)(1) of this section must be reasonable, as defined in §334.309 of this title (relating to Reasonable Costs-Interim Period); and

(6) an application for reimbursement has been filed in accordance with this subchapter which contains the information required by this subchapter.

(e) For purposes of this subchapter only, the following persons may be eligible owners or operators, provided that they meet the other criteria prescribed by this subchapter:

(1) the current owner or operator; and

(2) any past owner or operator who, in response to a release, performed corrective action on or after May 31, 1989.

(f) All claims for assistance and reimbursement filed under this subchapter are subject to the availability of funds in the petroleum storage tank remediation fund.

(g) Nothing in this subchapter shall affect the liability or responsibility of an owner or operator of an underground or aboveground storage tank to take corrective action in response to a release pursuant to applicable law.

(h) Nothing in these rules shall be construed to create an entitlement to monies in the petroleum storage tank remediation fund or any other fund, and the commission reserves the right to amend or repeal any and all provisions of this subchapter, including without limitation, provisions regarding eligibility and allowable costs.

(i) Payments made to persons other than the owner or the operator may only be made subject to subsections (j) and (k) of

this section and may only be made to agents duly authorized to receive payment on behalf of an eligible owner or operator.

(j) Authorization for an agent to receive payment on behalf of an eligible owner or operator must be in writing and signed by the eligible owner or operator who is requesting payment. The authorization must clearly describe what funds the agent is authorized to receive. If the executive director determines that the authorization is not clear as to the disposition of funds to which the eligible owner or operator is entitled, the executive director may withhold payment and request written clarification from the eligible owner or operator. The executive director may limit the number of agents which may receive payments for any one occurrence. Notwithstanding any review made or limitations imposed by the executive director pursuant to this section, neither the State of Texas, the commission, nor its employees shall be responsible for insuring that payment is made to the parties as contemplated by the authorization. It is the responsibility of the eligible owner or operator and the agent requesting payment to insure that the executive director is supplied with information sufficient to make the proper payments.

(k) No payment of funds will be made to any person other than the owner or operator under this subchapter except as follows:

(1) the person authorized to accept payment on behalf of an owner or operator is:

(A) a purchaser of the property where the release occurred and on which the claim for payment is based;

(B) a person who holds a security interest in the property where the release occurred and on which the claim for payment is based;

(C) a person who has insured the owner or operator of petroleum storage tanks for pollution liability and who has paid claims on that policy for remediation costs for which the tank owner may be reimbursed under this subchapter; or

(D) any other person who holds legal or equitable title to the property where the release occurred and on which the claim for payment is based; and

(2) the type of ownership interest required under paragraph (1)(A), (B), and (D) of this subsection is an interest in the surface estate of the property.

§334.303. Time to File Application-Interim Period.

(a) An application for reimbursement under this subchapter must

be filed on or before the effective date of permanent rules adopted to succeed this interim subchapter.

(b) No expenses are allowable for reimbursement under this subchapter unless an initial application for reimbursement is filed on or before the effective date of permanent rules adopted to succeed this interim subchapter.

§334.304. Who May File Application-Interim Period. Only the following persons may file an application for reimbursement under this subchapter:

(1) the owner of the petroleum storage tanks from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent;

(2) the operator of the petroleum storage tanks from which a release has occurred and for which partial or completed corrective action has been performed, or his duly authorized agent; or

(3) an owner or operator ordered by the commission or required in a written corrective action directive by the executive director on or after May 31, 1989, to assess the nature and extent of contamination in cases where no release is discovered, or the duly authorized agent of such owner or operator.

§334.305. Where and How Documents Must be Filed-Interim Period.

(a) Any application for reimbursement or claim for payment filed pursuant to this subchapter shall be filed as follows:

(1) the original application and one copy submitted to the Texas Water Commission District Office in the district where the tanks covered by the application are located;

(2) a complete copy of the original application plus any fees and registration information required pursuant to §334.310(a) of this title (relating to Requirements for Eligibility-Interim Period) submitted to: Texas Water Commission P.O. Box 13087, Austin, Texas 78711-3087, Petroleum Storage Tank Claims.

(b) All documents to be filed under this subchapter shall be filed with the executive director using one of the following:

(1) certified mail, return receipt requested;

(2) express mail or other overnight delivery service, return receipt requested;

(3) hand delivered to the appropriate offices; or

(4) any other method approved by the executive director.

(c) The date of filing of any document required to be filed with the executive director under this subchapter shall be the date postmarked on the return receipt in the case of mailing or courier services, and the receipt date stamped on the document by the executive director in the case of hand delivery.

(d) The date of filing documents with the chief clerk or the commission on protested claims for payment shall be controlled by Chapters 261, 263, 265, 267, 269, and 273 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before a Hearings Examiner; Procedures After Public Hearing Before the Full Commission; and Procedures After Final Decision), to the extent applicable.

§334.306. Form and Contents of Application-Interim Period.

(a) An application for reimbursement filed pursuant to this subchapter shall be on a form approved or provided by the executive director.

(b) The application shall contain the following:

(1) the name, address, and telephone number of the applicant;

(2) the name, address, and telephone number of:

(A) each owner and operator of the tanks;

(B) the facility owner; and

(C) the owner of the land on which the tank system is located;

(3) the address and zip code of the facility where the release occurred;

(4) the location of the facility at which the corrective action was performed or is to be performed, identified with sufficient clarity and detail to enable a person unfamiliar with the site to locate it and reach it by automobile;

(5) any information required by the executive director under §334.307 of this title (relating to Technical Information Required-Interim Period), if not already submitted to the executive director.

(6) legible copies of invoices, providing a description of:

(A) any work performed;

(B) who performed the work;

(C) where the work was performed;

(D) the dates the work was performed;

(E) the unit cost; and

(F) the total amount paid;

(7) Evidence that the amounts shown on the invoices for which reimbursement is requested have been paid in full by the claimant. The evidence must be accompanied by either:

(A) business receipts, indicating payments received;

(B) canceled checks;

(C) the certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full; or

(D) an affidavit signed by the person who performed the corrective action, affirming that the amounts which the applicant represents as being paid to him were paid in full;

(8) an estimate of the costs, if any, of corrective action which has not yet been completed, but for which reimbursement ultimately may be claimed. This estimate may be used for planning purposes only and will not be binding on the owner or operator for the purposes of payments from the petroleum storage tank remediation fund; and

(9) any other information which the executive director may reasonably require.

(c) Provided the initial application is filed on or before the effective date of final rule adopted to succeed this interim subchapter, the applicant may file the application at any phase of corrective action. Payment will only be made at the following payment times:

(1) after the completion of a phase; or

(2) at points during the corrective action process agreed to by the executive director and the applicant.

(d) The applicant must update his application with any information not yet submitted to the executive director before processing or payment of claims at any stage begins.

(e) For purposes of this subchapter, the following are the phases of corrective action:

(1) initial abatement measures and emergency actions phase;

(2) preliminary site assessment phase;

(3) comprehensive site assessment and remediation planning phase;

(4) remediation phase; and

(5) post-remediation phase.

§334.307. Technical Information Required-Interim Period.

(a) The following information may be required by the executive director as part of any application for reimbursement under this subchapter:

(1) any information which the executive director may require pursuant to Subchapter D of this chapter (relating to Corrective Action);

(2) a detailed account of what corrective action has been taken, why specific actions were taken, when, by whom, and with what results;

(3) an estimate of which other corrective action measures may be required to remediate the facility and the estimated time required to complete such measures.

(b) The executive director may require the applicant to supplement information already submitted or return the application without prejudice if the information is not sufficient to review the application.

§334.308. Allowable Costs-Interim Period.

(a) Only those costs which are allowable costs pursuant to the terms of this section shall be subject to reimbursement under this subchapter.

(b) Allowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the commission, subject to the limitations prescribed by this section.

(c) Allowable costs shall include, but not be limited to, the following:

(1) abatement of impacts and immediate threats of impact to human health, safety, and the environment, including measures necessary to prevent further releases and to identify and mitigate all fire, explosion, and human exposure hazards associated with a release;

(2) removal of free product;

(3) temporary provision of an alternate water supply, provided that in order to be allowable, any water supplied on or after January 17, 1990, must be approved in advance by the commission or must be supplied in response to a written directive from the executive director issued before January 17, 1990. The executive director shall determine the length of time during which the cost of water supply will be allowable, the amounts of water which may be allowable, the uses for which water supply may be allowable, and other conditions of approval;

(4) collection and analysis of surface and subsurface soil and water, free product, and vapor samples;

(5) emplacement of observation and monitor wells;

(6) removal, storage, treatment, recycling, transport, and disposal of free product, sludges, vapors, contaminated soils, contaminated water, and other wastes and contaminated articles, in accordance with applicable laws;

(7) removal, disposal, and replacement (including transport) of soils and pavement where removal is necessary to the performance of corrective action;

(8) tank system integrity testing in accordance with the methods prescribed by this chapter when such testing:

(A) is necessary to the performance of corrective action;

(B) has been specifically requested by the executive director on or after May 31, 1989; or

(C) has been specifically ordered by the commission on or after May 31, 1989;

(9) identification and testing of affected or potentially affected drinking water sources;

(10) design of plans for site assessment and remediation;

(11) acquisition, installation, startup, operation, and maintenance of site assessment and remediation systems, including monitoring;

(12) removal, transport, and disposal of the components of the underground or aboveground tank, excluding associated piping, pumps, and dispensers, in accordance with applicable law when connected with a corrective action measure;

(13) permanent abandonment in place of tank system a where abandonment in place rather than tank system removal is deemed by the executive director to be necessary to avoid destruction of substantial or significant surface improvements;

(14) temporary relocation of utility structures when necessary to the performance of corrective action;

(15) preparation of technical reports required pursuant to the requirements of Subchapter D of this chapter (relating to Reporting of Releases and Corrective Action);

(16) the fair market value of access to property outside of the facility boundaries where such access is necessary for the performance of corrective action;

(17) the reasonable value of necessary time spent by the applicant in planning and administering his own corrective action plan;

(18) performance of any corrective action measure which is specifically required by an order of the commission or a written request or confirmation of the executive director on or after May 31, 1989;

(19) state and federal sales taxes applicable to items which are otherwise allowable costs under this section;

(20) interest on the monies expended for an item of corrective action, provided that:

(A) the interest costs were incurred on expenses which themselves are allowable costs under this section;

(B) the interest costs were incurred on expenses which themselves are reasonable costs under §334.309 of this title (relating to Reasonable Costs-Interim Period);

(C) the rate of interest which may be reimbursed shall be the lesser of:

(i) the actual rate of interest incurred; or,

(ii) a rate which does not exceed an amount that is 2.0% higher than the New York prime rate on the date which the corrective action item for which interest is claimed is approved for payment under §334.313 of this title (relating to Executive Director's Fund Payment Report-Interim Period);

(D) the only interest allowable is the interest which accrues on a corrective action item on or after the day on which the item itself is approved for payment under §334.313 of this title (relating to Executive Director's Fund Payment Report-Interim Period); and

(E) any interest claim for an item under this subsection shall be in lieu of all interest which may be claimed under the Texas Water Code, §26. 3573, and Texas Civil Statutes, Article 601f, on that same item; and

(21) reasonable attorney's fees for legal services reasonably needed to accomplish corrective action, including the acquisition of access to property and necessary permits. Attorney's fees are not allowable for any costs listed in subsection (d)(6) of this section; and

(22) any other costs determined by the executive director to be allowable in accordance with the provisions of this subchapter.

(d) The following types of costs are those which will not be considered allowable costs under this subchapter:

(1) the cost of replacement, repair, and maintenance of affected tanks and associated piping;

(2) the cost of upgrading existing affected tanks and associated piping, including, but not limited to, the costs of corrosion protection, release detection, spill and overfill protection, or any other upgrading required by Subchapter C of this chapter (relating to Technical Standards);

(3) loss of income or profits, including without limitation, the loss of business income arising out of the review, processing, or payment of an application or request for assistance under this subchapter;

(4) decreased property values;

(5) bodily injury or property damage;

(6) attorney's fees arising out of or associated with:

(A) any contested cases before any court, administrative agency, or local governmental body; or

(B) any inquiries or disputes regarding any fund payment report issued pursuant to this subchapter or regarding the amount of money to be paid or reimbursed pursuant to this subchapter;

(7) any costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this subchapter;

(8) the costs of making improvements to the facility beyond those that are required for corrective action;

(9) costs associated with contamination assessments performed for any purpose where no release of petroleum is discovered, except when the contamination assessment has been ordered by the commission;

(10) costs of compiling and storing records relating to costs of corrective action;

(11) costs of corrective action taken in response to the release of a substance which is not a petroleum product as defined in §334. 322 of this title (relating to Subchapter H Definitions);

(12) costs of tank integrity testing when it is not specifically required by this chapter, requested by the executive director, or ordered by the commission;

(13) costs of any corrective action incurred by an owner or operator 30 days following the date notice of intent to engage in corrective action is issued by the executive director if received pursuant to §334.321 of this title (relating to Corrective

Action by the Commission-Interim Period.); and

(14) any activities, including those required by this chapter, which are not conducted in compliance with applicable state and federal environmental laws or laws relating to the transport and disposal of waste.

(e) The costs of abating the release from the petroleum storage tank and the costs of removal, transport, and disposal of the petroleum storage tank, excluding associated piping, pumps and dispensers, are the only allowable costs in situations where:

(A) a release of a petroleum product from a petroleum storage tank occurs near the location of a release of any other substance other than used crankcase oil from a motor vehicle at a facility where motor vehicles are serviced; and

(B) the contamination from the substance which is a petroleum product could not reasonably be remediated under a separate and distinct corrective action plan from the substance which is not a petroleum product.

§334.309. Reasonable Costs-Interim Period.

(a) For purposes of this subchapter, the term Reasonable Cost means that amount or range which is commensurate with the level of corrective action necessary to assess and remediate a site, as determined by the executive director, based on an evaluation of technical effectiveness and cost effectiveness as well as typical costs expected for the particular corrective action under review, with respect to the necessary or required scope and complexity of the action.

(b) No cost is reasonable unless it is also an allowable cost pursuant to §334.308 of this title (relating to Allowable Costs-Interim Period).

§334.310. Requirements for Eligibility-Interim Period.

(a) In order for a person to be an eligible owner or operator under this subchapter:

(1) they must be an owner or an operator of a petroleum storage tank as defined in §334.322 of this title (relating to Subchapter H Definitions) which is subject to the requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(2) all underground and above-ground storage tanks which they own or operate and which are required to be registered pursuant §334.7 of this title relating to (Underground Storage Tanks) or §334.123

of this title (relating to Aboveground Storage Tanks) must be registered with the executive director on or before the date on which the application for reimbursement is filed except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed;

(3) all annual facility fees due since September 1, 1987, pursuant to §334.21 (relating to Fee Assessment), and since September 1, 1989, pursuant to §334.124 of this title (relating to Aboveground Storage Tank Fees) for all underground and aboveground storage tanks which they own or operate must be paid to the executive director, except for those tanks which the owner or operator, upon reasonable inquiry, could not have known existed; and

(4) any release on which a claim under this subchapter is based must be reported to and confirmed by the executive director.

(b) Satisfaction of the eligibility criteria set forth in subsection (a) of this subsection shall constitute compliance for purposes of the Texas Water Code, §26.357(b)(2), for the purposes of this subchapter.

(c) The executive director may determine other persons to be eligible owners or operators in accordance with the standards of the Texas Water Code, §26.3571.

(d) Compliance with the Texas Water Code, Chapter 26, Subchapter I, for the purposes of determining eligibility under this subchapter and the Texas Water Code, §26.3571 does not mean that an eligible owner or operator has not violated a statute or a rule or order of the commission. Eligibility of an owner or operator under this subchapter does not preclude the issuance of an enforcement order or the assessment of administrative penalties against an eligible owner or operator.

§334.311. *Determining the Number of Occurrences-Interim Period.*

(a) All releases at a facility which are discovered before or during the following phase of corrective action will be considered part of one release, subject to subsection (d) of this section:

(1) the initial abatement measures and emergency action phase; and

(2) preliminary site assessment phase.

(b) Releases discovered at a facility after the preliminary site assessment and remediation planning phase will be considered as separate occurrences from the releases detected earlier at the facility, subject to subsection (d) of this section.

(c) Regardless of when discovered, if the contamination within a facility is located in two or more areas and remediation

of any area could be performed under separate and distinct corrective action plans, each distinct area within the facility will be considered as a separate occurrence, subject to subsection (d) of this section.

(d) In any situation, releases at a facility may be considered either as single or separate occurrences when doing either would:

(1) make the most efficient use of the petroleum storage tank remediation fund; or

(2) provide the most effective protection to the environment or best provide for public health and safety.

§334.312. *Review of Application by Executive Director-Interim Period.*

(a) An application for reimbursement or supplemented application filed under this subchapter shall be subject to review by the executive director:

(1) to determine if the information which is required to be submitted under this subchapter has been filed with the executive director; and

(2) to examine the substance of the application, including without limitation:

(A) the cost effectiveness and fiscal merits of the corrective action taken at the facility; and

(B) the technical merits of the corrective action taken at the facility;

(b) An application which does not contain all the information required by this subchapter may be returned by the executive director without prejudice. Return of the application by the executive director without prejudice does not prevent the applicant from filing another application for the same occurrence any time on or before the effective date of final rules adopted to succeed this interim subchapter.

(c) The executive director is not required to commence the substantive review of an application until he has received all of the information this subchapter requires the applicant to submit in order for the executive director to review a claim for payment.

(d) If, during the course of the substantive review, the executive director finds that additional information of the type required by this subchapter is needed to evaluate the application, he may require the applicant to provide such additional information. Further review of the application may be postponed until such information is received by the executive director.

§334.313. *Executive Director's Fund Payment Report-Initial Period.*

(a) Upon completion of the review of an application, the executive director shall prepare a fund payment report, indicating which of the applicant's claims the executive director believes should be reimbursed and which claims should not be reimbursed. If the executive director finds that any claim should not be paid or not paid to the full amount claimed, he shall briefly state the reasons in his report. The executive director shall submit a copy of his report to the applicant.

(b) The applicant shall review the fund payment report and shall file a written response with the executive director within 45 days of receipt of the report. The response shall be on a form provided or approved by the executive director. The applicant may consent or object to all or any part of the report. If the executive director has not received a response from the applicant within 45 days from the date on which the applicant received the report, the following shall occur:

(1) all claims approved for reimbursement in the fund payment report shall be eligible for payment;

(2) any claim addressed in the fund payment report shall be deemed satisfied in full; and

(3) the applicant will have waived his right to object to any item addressed in the fund payment report.

(c) Any item recommended for payment in the fund payment report to which the applicant objects shall not be eligible for payment until the executive director and the applicant agree on an amount for payment or until the commission orders payment in a prescribed amount, whichever occurs first.

(d) Any item recommended for payment in the fund payment report to which the applicant consents by filing a timely response to the fund payment report shall be eligible for reimbursement when the executive director receives the applicant's consent form. The consent of the applicant to any item recommended for payment shall mean that any claim covered by that item is considered satisfied in full.

(e) The executive director may in his discretion pay claims which he has approved for payment by sending payment with the fund payment report.

(f) In cases where there are two or more applicants filing claims for one occurrence, the executive director may make an equitable appointment of the \$10,000 required to be provided by the owner or operator under §334.302 (c)(1) of this title (relating to General Conditions and Limitations Regarding Reimbursement-Interim Period).

§334.314. Protest of Fund Payment Report-Interim Period.

(a) If he disagrees with any conclusion in the fund payment report, the applicant may file a protest with the executive director within 45 days of the date on which he receives the fund payment report.

(b) The protest must be in writing and signed by the applicant. It must contain a brief description of each point or conclusion in the fund payment report to which the applicant objects. The protest must be sent by United States mail postage paid, return receipt requested.

§334.315. Mediation of Dispute-Interim Period.

(a) The applicant and the staff of the executive director shall attempt to resolve any disputes over the fund payment informally. If no resolution is reached by the staff and the applicant within 45 days of the date on which the executive director receives a protest, the applicant may request mediation by the executive director.

(b) Within 30 days of receiving a request for mediation, the executive director or his designee shall meet with or contact the applicant to review his complaint and to hear responses of the staff. After hearing the matter, the executive director or his designee shall render a written decision on the dispute and forward a copy of his decision to the applicant.

§334.316. Formal Petition-Interim Period.

(a) If he is aggrieved by the decision of the executive director or his designee rendered under §334.313 of this title (relating to Mediation of Dispute-Interim Period), the applicant may file a petition with the commission, requesting relief.

(b) The petition must be filed with the chief clerk, and a copy shall be sent to the executive director no later than 30 days after the date on which the applicant receives the executive director's decision.

(c) The petition must contain:

(1) the name and address of the applicant;

(2) the address of the facility in question and the executive director's project identification number, if any; and

(3) a clear statement of each item which the applicant disputes on the executive director's fund payment report and of any other complaint the applicant has relating to the claim.

§334.317. Hearing by the Commission-Interim Period. Following receipt of a petition, the commission shall conduct a hearing on the petition. To the extent applicable, the proceedings before, during, and after the hearing shall be governed by

Chapters 261, 263, 265, 267, 269, and 273 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before a Hearings Examiner; Procedures After Public Hearing Before the Full Commission; and Procedures After Final Decision).

§334.318. Recovery of Costs-Interim Period. The commission may initiate proceedings against any owner or operator of a petroleum storage tank for recovery of costs, as provided by the Texas Water Code, §26.355.

§334.319. Administrative Penalties and Other Actions-Initial Period. Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of any statute, any rule of the commission, or any order of the commission.

§334.320. Responsibilities of Owners and Operators-Interim Period.

(a) Nothing in this subchapter changes the responsibilities of an owner or operator of an underground or aboveground storage tank to respond to a release of regulated substances or to comply with any other requirements of statutes or the rules or orders of the commission.

(b) The owner and operator are obligated to pursue whatever actions are necessary to minimize any immediate impacts or threats to human health and safety and the environment and to stabilize the conditions caused by the release. When financially unable to pursue immediate abatement actions, the owner or operator shall notify the executive director immediately.

(c) No person shall knowingly submit false information to the executive director as part of any materials required to be submitted under this subchapter.

§334.321. Corrective Action by the Commission-Interim Period.

(a) The executive director may undertake corrective action in any case if:

(1) the owner or operator of the underground or aboveground storage tank is unwilling to take corrective action;

(2) the owner or operator of the underground or aboveground storage tank cannot be found;

(3) the owner or operator of the underground or aboveground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety or the environment;

(4) the executive director determines that more expeditious corrective action is necessary to protect the public health and safety or the environment from harm; or

(5) the executive director considers it necessary to take corrective action to protect the public health and safety or the environment.

(b) Except as provided in subsection (d) of this section, the executive director must provide notice of his intent to take corrective action to all owners and operators of petroleum storage tanks at a facility that is then currently registered in accordance with the registration requirements of this chapter before he undertakes corrective action at the facility.

(c) The notice must identify the property, state that the executive director intends to take corrective action at the facility, and state that costs incurred by the owner or operator from and after 30 days following the date the notice is issued will not be allowable costs for reimbursement by the commission.

(d) The executive director may commence corrective action without prior notice if in his discretion immediate action is required to protect public health and safety or to protect the environment from harm. The executive director must provide the notice that he has commenced corrective action to all owners and operators of petroleum storage tanks at a facility that is then currently registered in accordance with the registration requirements of this chapter as soon as possible in the manner prescribed by subsection (c) of this section.

(e) No costs of corrective action incurred by an owner or operator at a facility on or after 30 days following the date the executive director issues notice pursuant to this section are allowable for reimbursement under this subchapter.

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

Aboveground storage tank—A non-vehicular device with a capacity of more than 1,100 gallons, and all connecting piping both above- and below-ground, that is made of non-earthen materials; located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking basement, or vault; and designed to contain an accumulation of petroleum.

Confirmed—In the context of a release, being confirmed by the executive director under this subchapter means that the executive director has determined that sufficient evidence exists to prove that a release of petroleum products has occurred from a petroleum storage tank subject to

regulation under this chapter.

Eligible operator—As used in this subchapter, any person in control of or having the responsibility for the daily operation of a petroleum storage tank who meets the eligibility requirements prescribed in §334.510 of this title (relating to Requirements for Eligibility-Interim Period).

Eligible owner—As used in this subchapter, means any person who meets the eligibility requirements prescribed in §334.510 of this title (relating to Requirements for Eligibility-Interim Period) and who currently holds legal possession or ownership of a total or partial interest in a petroleum storage tank. For the purposes of this subchapter, where the actual ownership of the petroleum storage tank is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the petroleum storage tank is located shall be considered the petroleum storage tank owner, unless it can be shown by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the petroleum storage tank is owned by another. The term "owner" does not include a person who holds an interest in a petroleum storage tank solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the petroleum storage tank. For purposes of this subchapter, if it can be demonstrated that a petroleum storage tank has been "out of operation" as that term is defined in §334.2 of this title (relating to Definitions) for a period of 10 years, the tank shall be considered property of the owner of the surface estate.

Petroleum product—Obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

Petroleum storage tank—

(A) Any one or combination of aboveground storage tanks and all connecting piping that contain petroleum products and that are regulated by the commission.

(B) Any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

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

Issued in Austin, Texas on June 13, 1990.

TRD-9006117

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: July 20, 1990

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

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**TITLE 34. PUBLIC
FINANCE**

**Part I. Comptroller of
Public Accounts**

Chapter 3. Tax Administration

**Subchapter O. State Sales and
Use Tax**

• 34 TAC §3.289

The Comptroller of Public Accounts proposes an amendment to §3.289, concerning alcoholic beverage exemptions. The amendment exempts receipts for admission to an amusement from the sales tax imposed under §3.298, concerning amusement services, when those receipts are taxed under the Texas Alcoholic Beverage Commission Code, §202.02.

Ben Lock, director of the Comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock 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 by providing them with new information regarding their tax responsibilities. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lucy Glover, Director, Taxability, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

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

§3.289. *Alcoholic Beverage Exemptions.*

(a) Exemptions.

(1) Sales or use tax is not due on charges for admission to night clubs, dance halls, discos, etc., when the charges are subject to tax under the Texas Alcoholic Beverage Code, §202.02. If the gross receipts tax paid on cover charges is later refunded, sales tax will be due on the amount collected as a fee for admission to an amusement service.

(2) Sales or use tax is not due on the sale of mixed beverages and gratuities collected on those sales if the receipts are taxable under Texas Alcoholic Beverage Code, §202.02. If the [10%] gross receipts tax paid on ice and nonalcoholic beverages is later refunded by the Texas Alcoholic Beverage Commission, sales tax is due on the original sales price.

(b)-(f) (No change.)

(g) Certificates required. The burden of proving that a sale is exempt is upon the seller, unless the seller [he] requires the purchaser to furnish an exemption or resale certificate. The exemption or resale certificate relieves the seller from the burden of proof only if taken in good faith. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

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

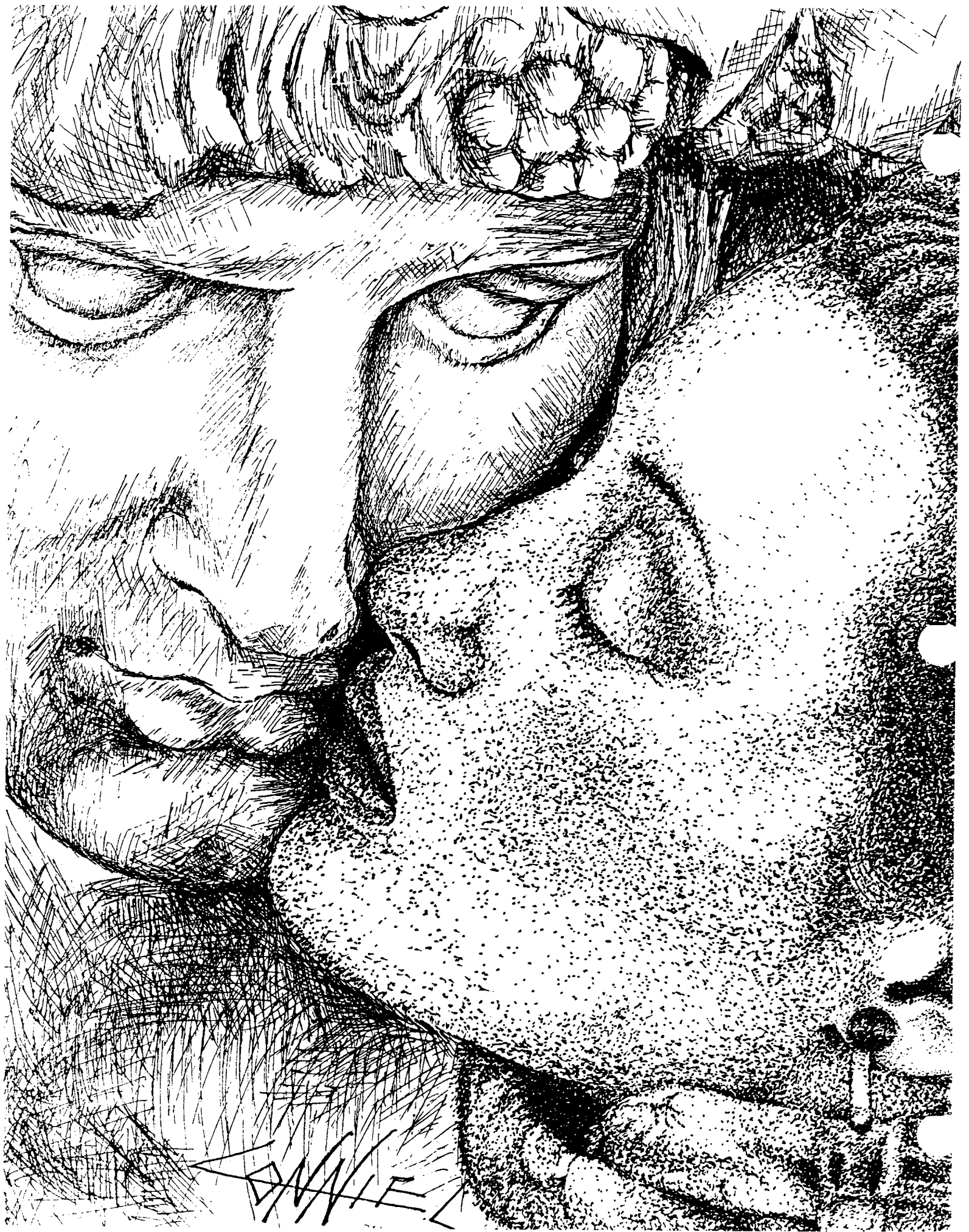
Issued in Austin, Texas, on June 12, 1990.

TRD-9006074

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: July 20, 1990

For further information, please call: (512) 463-4004



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 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter O. Texas

Outstanding Rural Scholar Recognition and Forgiveness Loan Program

• 19 TAC §§21.460-21.464, 21.466-21.472, 21.474-21.486

The Texas Higher Education Coordinating Board adopts new §§21.460-21.464, 21.466-21.472, and 21.474-21.486. Sections 21.460, 21.461, 21.463, 21.466-21.472, 21.474 and 21.486 are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Section 21.462 is adopted without changes and will not be republished.

The new sections provide improvement in numbers of health professionals providing health care in rural areas of Texas.

The new sections are necessary to implement provisions of Senate Bill 1351. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, Texas Civil Statutes §51.810, which provides the Coordinating Board with the authority to adopt rules regarding the Texas Outstanding Rural Scholars' Recognition and Forgiveness Loan Program.

§21.460. Purpose. The purpose of the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program is to recognize, encourage, and financially support outstanding rural scholars in health professions studies at institutions of higher education and to lead them to provide health care in rural areas and communities of Texas.

§21.461. Administration. The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program.

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

Advisory committee—The Texas Outstanding Rural Scholar Advisory Committee to the board.

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Cosigner—A cosigner of a promissory note executed under these rules shall be a person signing a note, other than the loan recipient, who is over 21 years of age and who is gainfully employed or otherwise demonstrates financial responsibility. Such a person may be a relative other than the spouse and may not be a student. The community agent may serve as a cosigner. A cosigner is jointly and severally responsible for all promissory notes issued through the program and signed by the rural scholar and him or herself.

Forgiveness loan(s)—For purposes of this subchapter, loans made through the Texas Outstanding Rural Scholar Forgiveness Loan Program, which can be cancelled by providing health care services to the community.

Full-time student—As defined by the institution of higher education or health professions program in which the outstanding rural scholar is enrolled.

Fund—The Texas Outstanding Rural Scholar Loan Fund from which forgiveness loans are made.

Half-time student—As defined by the institution of higher education or health professions program in which the outstanding rural scholar is enrolled.

Health care professional—Any provider of health care or health-related services in the fields of medicine, dentistry, optometry, pharmacy, chiropractic, psychology, nursing, and allied health.

Health professions—The fields of medicine, dentistry, optometry, pharmacy, chiropractic, psychology, nursing, and allied health.

Program officer—The Texas Outstanding Rural Scholar Forgiveness Loan Program officer designated by the institution of higher education to represent the program on that campus.

Resident of Texas—A resident of Texas as defined by the board. Nonresidents eligible to pay Texas resident tuition at institutions of higher education are excluded.

Rural area—Any nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Rural community—Any incorporated or unincorporated municipality in a rural area.

§21.464. Allied Health Professional. An allied health professional is any individual who:

(1) has received a certificate, an associate degree, a bachelor's degree, a masters degree, a doctoral degree, or post-doctoral training in a science relating to health care;

(2) shares in the responsibility for the delivery of health care services or related services, including the following:

(A) services relating to the identification, evaluation, and prevention of diseases and disorders;

(B) dietary and nutritional services;

(C) health promotion services;

(D) rehabilitation services; or

(E) health system management services.

§21.466. Eligible Institution of Higher Education.

(a) Outstanding Rural Scholars' Recognition Program. For purposes of the Outstanding Rural Scholar Forgiveness Loan Program, an eligible institution of higher education may be any public institution as defined in the Texas Education Code, §61.003(8) or any non-profit, independent institution as defined in the Texas Education Code, §61.22.

(1) Any health-related schools or programs within eligible institutions must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Texas State Board of Nurse Examiners for Registered Nurses, the Texas Board of Vocational Nurse Examiners, or, in the case of allied

health, an accrediting body recognized by the United States Department of Education.

(2) An eligible institution must annually, prior to April 1, submit a budget(s) reflecting the cost of education for the next academic year to the board for approval.

(3) An eligible institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Designation of institutional representative. Unless otherwise specified by the chief executive officer of the institution, the director of student financial aid shall serve as the Outstanding Rural Scholar Forgiveness Loan Program officer, shall be the board's on-campus agent to certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the fund.

§21.467. Community Agent. A community agent may be any Texas nonprofit or governmental entity with council members, a board of trustees, or commissioners having perpetuity that:

- (1) is responsible to and serves a rural area or rural community;
- (2) is legally authorized to raise funds and/or accept grants, financial gifts from citizens, scholarship funds, or private foundation funds; and
- (3) is subject to a periodic financial audit.

§21.468. Eligible Scholar. An eligible scholar is one who is a Texas resident, is nominated and sponsored by and has financial support committed from a community agent as defined in these rules, and is:

- (1) a high school student who:

(A) is classified as a senior and is scheduled to graduate from high school within 12 months;

(B) intends to enroll in an eligible institution of higher education on at least a half-time basis to pursue a course of study to become a health care professional; and

(C) is in the upper 25% of his or her high school's senior class;

- (2) a high school student who either:

(A) is in his or her last year as a full-time high school student prior to pursuing both high school studies and a course of study in an eligible institution of higher education to become a health care professional; or

(B) is completing high school studies and simultaneously pursuing a course of study in an eligible institution of higher education to become a health care professional; and

(C) intends to enroll, or is enrolled, in an eligible institution of higher education on at least a half-time basis;

- (3) a college student who:

(A) is enrolled in an eligible institution of higher education on at least a half-time basis to become a health care professional;

(B) has a grade point average equivalent to 3.0 on a 4.0 scale in all college course work; and

(C) is in his or her last year of college studies prior to entering a health professions program at an eligible institution of higher education; or

- (4) an individual who:

(A) has a high school diploma or equivalent;

(B) demonstrates to the satisfaction of a community agent as defined in these rules that he or she has the motivation, qualities, and abilities that lead to success in the health profession; and

(C) intends to enroll, or is enrolled, in an eligible institution of higher education on at least a half-time basis to become a health care professional.

§21.469. Rural Scholar. A rural scholar is one who is nominated by a community agent for consideration by the advisory committee.

§21.470. Outstanding Rural Scholar. An outstanding rural scholar is one who is selected for recognition by the advisory committee to the board in competition with other rural scholars.

§21.471. Outstanding Rural Scholar Advisory Committee.

(a) Role. The Outstanding Rural Scholar Advisory Committee serves as an advisory committee to the board and performs the following duties for the board:

(1) recommends guidelines to the board for use by community agents in nominating and sponsoring rural scholars;

(2) selects and ranks outstanding rural scholars for the board;

(3) assists the board in building community support for the Outstanding Rural Scholar Recognition Program;

(4) assists the board in dispensing information prepared by the board on the Outstanding Rural Scholar Recognition Program; and

(5) advises the board on the progress of the Outstanding Rural Scholar Recognition Program.

(b) Composition. The composition of the advisory committee is as follows:

(1) one rural practicing family practice physician;

(2) one rural hospital administrator;

(3) one rural practicing registered professional nurse;

(4) one rural practicing allied health professional;

(5) one dean of a medical school;

(6) one dean of a nursing school;

(7) one dean of a school of allied health science;

(8) one head of a vocational/technical institution;

(9) one community college administrator;

(10) one individual knowledgeable in student financial assistance programs;

(11) one rural public school superintendent; and

(12) one rural resident.

(c) Appointments. Appointments to the advisory committee by the board shall be made with consideration to geographical areas of the state.

(d) Vacancies. Vacancies on the advisory committee shall be filled by the board in the same manner as indicated in subsections (b) and (c) of this section.

(e) Terms. The committee members serve terms of six years with the terms of one-third of the members expiring on August 31 of each odd-numbered year. All committee members are eligible for reappointment to consecutive terms.

§21.472. Outstanding Rural Scholar Recognition Program.

(a) The community agent, in cooperation with eligible high schools and postsecondary institutions, is responsible for initiating and developing the local nominee selection process and support mechanism for a rural area or rural community for the Outstanding Rural Scholar Recognition Program.

(b) The community agent and high schools and postsecondary institutions are responsible for providing information about the program to interested persons.

(c) The community agent is responsible for preparing a portfolio for each rural scholar sponsored by the agent for review by the advisory committee. That portfolio must include the following:

(1) the rural scholar's name, birthdate, and social security number;

(2) evidence that the student is an eligible scholar;

(3) evidence that the rural scholar intends to enroll in a postsecondary institution for the purpose of pursuing an education in a health professions field and return to the rural area or rural community to provide health care upon graduation, certification, and/or licensure. This evidence must consist of the following:

(A) the results of an interview with the rural scholar. The interview must include but is not limited to responses to questions provided by the advisory committee;

(B) a typed essay of no more than 500 words composed by the rural scholar stating the following:

(i) the reasons for entering the competition;

(ii) the reasons for entering a health professions field;

(iii) the reasons for wanting to provide health care services to rural Texans; and

(iv) the health profession he or she plans to pursue and the anticipated time required to complete the program of study;

(4) results of any standardized tests taken by the rural scholar;

(5) evidence of academic honors and awards bestowed upon or received by the rural scholar;

(6) evidence of service awards received by the rural scholar;

(7) a list of extracurricular activities in which the rural scholar has participated or is participating;

(8) no more than three recommendations from the professional staff of the high school, college, or university, or from employers, and/or community leaders;

(9) a statement from the community agent of why the rural scholar was selected and a statement of the community agent's satisfaction that the rural scholar's intentions are genuine;

(10) credentials of the community agent including the following:

(A) proof that the community agent meets the criteria of a community agent as described in these rules;

(B) a brief description of the local selection process; and

(C) a statement from the community agent of its commitment to support and encourage the rural scholar in ways other than through financial support including a description of how this support will be provided;

(11) a statement from the community agent of the current need and projected need for a health care provider in the rural area or rural community in the health profession for which the nominee will be trained to provide services; and

(12) a statement that the community agent is willing to provide funds to the rural scholar and, if the student is selected for a forgiveness loan, believes it will be able to provide at least 50% of the cost of education at the eligible institution in which the rural scholar enrolls.

(d) The advisory committee may request additional information and/or interviews from the community agent and the rural scholar as needed.

(e) The portfolio described in subsection (c) of this section must arrive at the board no later than October 15.

(f) The advisory committee will rank scholars, based on information in the student portfolio.

§21.474. Designation of Outstanding Rural Scholars.

(a) The advisory committee shall select and rank the outstanding rural scholars and inform the board of their selections. The board shall notify the community agents of the outstanding rural scholars selected for each year and provide each community agent with a certificate of award signed by the commissioner on or before January 15 of each year.

(b) By February 8 the community agent shall send the board proof of the public recognition of each outstanding rural scholar. Such recognition must include publication in local newspapers of the outstanding rural scholar's selection and may include public recognition of the outstanding rural scholar at civic gatherings and high school assemblies.

(c) In addition to subsection (b) of this section, the community agent of each top ranked outstanding rural scholar who may be eligible for a forgiveness loan will be asked to provide the board by February 8:

(1) the name of the eligible institution the scholar will attend;

(2) the one-year cost of education for the scholar; and

(3) a certified statement of the community agent's commitment to provide 50% of the cost of education if his or her nominee receives a forgiveness loan.

(d) By February 15 of each year, the board shall provide institutions of higher education with lists of outstanding rural scholars.

§21.475. Qualifications for Forgiveness Loans.

(a) The commissioner may authorize, or cause to be authorized, forgiveness loans to outstanding rural scholars at any eligible institution, provided the applicant:

(1) is a resident of Texas;

(2) is enrolled, or accepted for enrollment for the number of hours required by the eligible institution for the student's program of study;

(3) has completed an application for an outstanding rural scholar forgiveness loan;

(4) has provided the board evidence of an agreement entered into by the Outstanding Rural Scholar and the community agent;

(5) has obtained the signature of a cosigner on the forgiveness loan promissory note;

(6) maintains satisfactory academic progress in an educational program, except that one semester of grace may be extended to students on academic probation during which time the student may receive a forgiveness loan;

(7) maintains intent to pursue a course of study in the health professions until accepted in a health professions program or is pursuing a course of study in the health professions;

(b) The community agent will make a formal commitment to provide 50% of the student's cost of education throughout the student's agreed-upon program of study.

§21.476. Priorities for Application Processing. Applications received by the board on or before June 15 will be processed in the order based upon the rank assigned the outstanding rural scholar by the advisory committee. Applications received after all appropriated funds are committed and/or after June 15 shall be processed only if funds from loan cancellations and repayments become available during the period for which the loan is needed. Renewal applications have priority over new applications.

§21.477. Annual Loan Limits. For each year of eligibility, the amount of a forgiveness loan an outstanding rural scholar may receive may not exceed 50% of the cost of education at the eligible institution of higher education in which the outstanding rural scholar is enrolled.

§21.478. Payments to Students.

(a) No payment shall be made to any student until he or she has executed a promissory note payable to the fund for the full amount of any authorized loan plus interest and other fees.

(b) For the purpose of any contract executed by the student, the defense that he or she was a minor at the time he or she executed a promissory note shall not be available to him or her in any action arising on said note.

§21.479. Change in Student Status. The program officer and the outstanding rural scholar must notify the board promptly:

(1) if during the student's enrollment, the student ceases to be enrolled full time in a course of study in a health professions field requiring full-time enrollment;

(2) if during the student's enrollment, the student ceases to be enrolled at least half time; or

(3) if during the student's enrollment, the student changes his or her major course of study to a major that is not a health professions field.

§21.480. Returned Funds. In any semester or term in which a student becomes ineligible to participate in the forgiveness loan program, funds disbursed to the student from the fund during that semester or term shall be returned to the program in accordance with the following schedule.

(1) In the first week of classes, the refund is 100%.

(2) In the second week of classes, the refund is 70%.

(3) In the third week of classes, the refund is 60%.

(4) In the fourth week of classes, the refund is 40%.

(5) In the fifth week of classes or later, the refund is 0%.

§21.481. Conditions of Loans. A forgiveness loan made under the provisions of this subchapter is contingent upon the outstanding rural scholar having a formal agreement with the community agent, in which the community agent pledges to provide financial and other support to the scholar and the outstanding rural scholar pledges to provide health care services to the community.

§21.482. Interest on Forgiveness Loans. The interest on forgiveness loans shall be simple interest and the interest rate to be charged shall be a fixed rate set from time to time by the commissioner and ratified by the board. Interest shall accrue from the date of disbursement until the loans are either totally repaid or forgiven.

§21.483. Compliance with Conditions of Forgiveness Loans.

(a) Forgiveness of loans under provisions of this subchapter may occur if the forgiveness loan recipient fulfills the terms of the promissory note to become a health care professional and provides health care to a rural area or rural community. The health care provider must:

(1) be fully credentialed, certified, or licensed in the health care field in which health care is provided; and

(2) reside in the rural area or rural community in which the health care is provided.

(b) A forgiveness loan recipient may have the principal and interest of one-year's loan forgiven for each 12 months he or she provides health care on a full-time basis in the rural area or rural community. If employment is on less than a full-time basis, benefits will be prorated.

(c) Only outstanding principal and interest remaining unpaid are eligible for forgiveness.

(d) Should the board, on the recommendation of the advisory committee, find the sponsoring community not to be in need of the scholar's services, the board may permit the borrower to fulfill terms of the promissory note regarding loan forgiveness by practicing in a rural area or community elsewhere in Texas.

§21.484. Noncompliance with Conditions of Forgiveness Loans.

(a) Period of loan repayment. The principal amounts of forgiveness loans that must be repaid shall be repaid in installments over a period of not more than 10 years.

(b) Repayment of loans. The board may place a forgiveness loan in repayment if it determines at any time that the outstanding rural scholar is not complying with the conditions of the loan as described in this subchapter.

(1) Although loans may be prepaid at any time without penalty, repayment shall extend over the period authorized in subsection (a) of this section.

(2) The board will provide a repayment schedule calling for the minimum payment amount sufficient to repay all loans made under this subchapter within the loan period. In no case will the minimum

monthly repayment be less than \$50 on all such loans.

(3) Amounts repaid shall be deposited in the fund.

(4) A charge of 5.0% of the monthly payment or \$5.00, whichever is less, shall be assessed on any payment received later than 10 days from the due date of such payment. Such charges shall be collected out of the first payments made in excess of the interest then due.

(5) The commissioner may postpone required periodic installments of principal and any accrued interest during any authorized period. Any such periods shall not be included in determining the 10-year repayment period.

(6) The cosigner may not be held responsible for the repayment of the loan, accrued interest, and other charges if the borrower dies or becomes totally and permanently disabled.

(c) Grace periods of loans. The following provisions regarding grace periods will apply to all forgiveness loan recipients.

(1) A loan recipient who changes his or her field of study out of a health professions field will be found in noncompliance. Repayment begins four months after he or she drops below half time.

(2) A loan recipient pursuing a course of study requiring full-time enrollment who ceases to be enrolled full time will be found in noncompliance. Repayment will begin four months after he or she ceases to be enrolled full time.

(3) A loan recipient who ceases to be enrolled at least half time will be found in noncompliance and repayment will begin four months after dropping to less than half-time enrollment.

(4) A loan recipient who ceases to provide the health care specified in a rural area or rural community before the total principal and interest on all outstanding loans are forgiven will be found in noncompliance. Repayment will begin immediately.

(d) Grace periods for students studying medicine. In addition to the provisions in subsection (c) of this section for students who have pursued studies in medicine, the following provisions regarding grace periods will apply to forgiveness loan recipients.

(1) A loan recipient who is accepted for a residency or internship and who has not begun a residency or internship program within four months of completion of medical school or who, within four months of completion of graduate study, does not continue into a residency or internship will be in noncompliance. Repayment will begin immediately.

(2) A loan recipient who graduates but does not complete the minimum requirements for licensure by the Texas State Board of Medical Examiners will be found in noncompliance. Repayment will begin four months from the time he or she discontinues formal training.

(3) A loan recipient who meets the minimum requirements for licensure by the Texas State Board of Medical Examiners, is not continuing in a residency program, and does not practice in a rural area or rural community within four months of licensure will be found in noncompliance. Repayment will begin immediately.

(4) A loan recipient who has completed a residency or internship program has four months to begin practicing in the rural area or rural community. If practice does not begin within four months, the loan recipient will be found in noncompliance. Repayment will begin immediately.

(e) Grace periods for students studying health professions other than medicine. In addition to the provisions in subsection (c) of this section, for students pursuing studies in health professions other than medicine, the following provisions regarding grace periods will apply to forgiveness loan recipients.

(1) A loan recipient who does not become fully credentialed, certified, and/or licensed within one year of completing the required professional education will be found in noncompliance and repayment will begin immediately.

(2) A loan recipient who does not begin providing professional health care in a rural area or rural community within four months of becoming fully credentialed, certified, and/or licensed will be found in noncompliance. Repayment will begin immediately.

(f) Postponement of repayment. The commissioner may delay the repayment requirement for recipients enrolled on at least a half-time basis at an eligible institution. These postponement periods are not included when calculating the maximum repayment period. The commissioner may also waive or delay repayment for recipients who give evidence of extreme financial hardship, in which case the period of postponement will not be included in determining the maximum repayment period. The commissioner may require payments on the interest being accrued during the time of a postponement.

(g) Enforcement of collection. When a recipient of a loan authorized by this law has failed or refused to make as many as six monthly payments due in accordance with a promissory note(s), then the full amount of remaining principal, interest, and late charges shall immediately become due and payable. The recipient's

name and last known address and other information as requested by the commissioner shall be reported to the attorney general. Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting for him in the county of the recipient's residence or in Travis County, unless the attorney general finds reasonable justification for delaying suit and so advises the commissioner in writing.

(1) Upon notification by the commissioner of default on this loan, the educational institution shall cause the records, including transcripts of the forgiveness loan recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the commissioner that such default has been corrected. Should the default continue beyond at least 60 days from the date suit service was obtained, the commissioner will cause a judgment to be entered which may be filed in the county records where the service was obtained. The commissioner will release such judgment once the recipient has completed the repayment of the debt as stipulated in the judgment.

(2) In all cases of default, the forgiveness loan recipient will be responsible for the payment of principal and all accrued charges, including interest, late charges, skiptracing fees, court costs, and attorney fees.

(h) Provisions for disability and death. The board shall cancel a forgiveness loan recipient's repayment obligations if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the forgiveness loan recipient is unable to complete a course of study or provide health care because of a disability that is expected to continue indefinitely or result in death; or

(2) on the basis of a death certificate, or other evidence of death that is conclusive under state law, that the forgiveness loan recipient has died.

§21.485. Directory of Community Agents. The board shall maintain a directory of community agents which it can provide to interested individuals, schools, and institutions of higher education.

§21.486. Dissemination of Information. The board shall disseminate information about the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program to all interested parties.

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

Issued in Austin, Texas, on June 8, 1990.

TRD-9006084

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

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For further information, please call: (512) 462-6420

Subchapter P. Professional Nurses' Student Loan Re- payment Program

• 19 TAC §§21.500-21.512

The Texas Higher Education Coordinating Board adopts new §§21.500-21.512. Sections 21.503, 21.509, and 21.511, are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.500-21.502, 21.504-21.508, and 21.510, are adopted without changes and will not be republished.

The new sections will provide improvement in numbers of citizens choosing to become registered nurses.

The new sections are necessary to implement provision of Senate Bill 1351. The new sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

Several commenters commented that they would like to see student loans from hospitals named as eligible for repayment. They advised against excluding nurses against whom a formal complaint (whether meritorious or not) was pending. They advised against giving preference to nurses employed by non-profit entities. Those who commented against the adoption of the new sections were the Texas Hospital Association and the Texas Health Care Association.

The Coordinating Board did not disagree with comments and preference for nurses at non-profit entities was eliminated. Hospital loans will be specifically named in future versions of the rules and nurses with formal charges (not complaints) will be excluded from the program.

The new sections are adopted under the Texas Education Code, §61.656, Texas Civil Statutes, which provides the Coordinating Board with the authority to adopt rules regarding the Professional Nurses' Student Loan Repayment Program.

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

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Financial need—A measure of the applicant's need for financial assistance, measured in terms of family income, family

size, and total education-related indebtedness.

Pro rata—A proportionate basis upon which payment amounts will be scaled, depending upon the share of a state employee's full work year worked by the loan repayment recipient.

Professional nurse—An individual who is a licensed registered nurse in the State of Texas.

Service period—A 12-month period for which a professional nurse qualifies for repayment of student loans.

§21.509. Priorities of Application Approval. The advisory committee shall advise the board on priorities of application approval based upon the following criteria (not in priority order):

- (1) ethnic or racial minority status;
- (2) geographical area of nursing practice;
- (3) employment by a state agency;
- (4) employment on a nonprofit nursing school faculty;
- (5) whether the person is a practicing nurse in an area with an acute nursing shortage; and
- (6) financial need.

§21.511. Repayment of Student Loans. Eligible student loans of eligible professional nurses shall be repaid under the following conditions.

- (1) A total annual repayment on behalf of an eligible professional nurse shall not exceed the unpaid balance owed on one or more eligible loans, or \$2,000, whichever is less.
- (2) Repayment shall be made at the end of each service period.
- (3) Student loan repayment(s) may be renewed annually upon successful completion of the application process, but for no more than a total of three years.
- (4) The annual repayment(s) shall be made co-payable to the eligible professional nurse and to any eligible lender(s) or holder(s), to be applied to the outstanding balance of the loan.
- (5) The annual repayment(s) may be made for verified full-time or for verified part-time service on a pro rata basis, if the employer has provided a favorable recommendation on behalf of the nurse.

§21.512. Dissemination of Information. The board shall publish and disseminate, with the assistance of the advisory committee, information about the Professional Nurses' Student Loan Repayment Program to postsecondary institutions

which offer professional nursing programs. In addition, information shall be provided to appropriate state agencies and any interested professional associations of professional nurses, employers of professional nurses, and associations of employers of professional nurses.

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 June 8, 1990.

TRD-9006083 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

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For further information, please call: (512) 462-6420

◆ ◆ ◆ Subchapter Q. Licensed Vocational Nurses' Student Loan Repayment Program

• 19 TAC §§21.530-21.542

The Texas Higher Education Coordinating Board adopts new §§21.530-21.542. Sections 21.534, 21.535, and 21.539, are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.530-21.533, 21.536-21.538, and 21.540-21.542, are adopted without changes and will not be republished.

The new sections provide improvement in the numbers of professional nurses providing health care in Texas.

The new sections are necessary to implement provisions of Senate Bill 1351. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

Several commenters commented that they would like to see student loans from hospitals named as eligible for repayment. They advised against excluding nurses with complaints pending and advised against giving preference to nurses of nonprofit employers. Those who commented against the adoption of the new sections were the Texas Hospital Association and the Texas Health Care Association.

The Coordinating Board doesn't disagree and all three changes were made. Hospitals were listed as eligible lenders, references to nonprofit employers were dropped. The existence of formal complaints was changed from an eligibility criterion to one of several bases for ranking applicants.

The new sections are adopted under the Texas Education Code, §51.556, Texas Civil Statutes, which provides the Coordinating Board with the authority to adopt rules regarding the Licensed Vocational Nurses' Student Loan Repayment Program.

§21.534. Eligible Lender and Holder. The board shall retain the right of determining eligibility of lenders and holders of student loans to which payments may be made. An eligible lender or holder shall, in general, make or hold loans made to individuals for purposes of attending postsecondary institutions, and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, licensed Texas hospital, licensed Texas long-term care facility, secondary market, governmental agency, pension fund, private foundation, or insurance company provided the loan conforms to the definition of an eligible student loan as described in this subchapter.

§21.535. Eligible Nurse. A nurse who is licensed by the Board of Vocational Nurse Examiners for the State of Texas and against whom no professional disciplinary action has been taken must provide the board all data required to determine his or her eligibility.

§21.539. Priorities of Application Approval. The advisory committee shall advise the board on priorities of application approval based upon the following criteria (not in priority order):

- (1) minority status;
- (2) scholastic performance;
- (3) geographical area of nursing practice;
- (4) financial need;
- (5) whether the person receives aid to families with dependent children or participates in another public welfare program;
- (6) employment by a state agency;
- (7) employment by a nonprofit nursing school faculty;
- (8) whether the person is a practicing nurse in an area with an acute nursing shortage;
- (9) whether the eligible nurse has previously received a repayment; and
- (10) whether the eligible nurse has a formal complaint pending which has not been resolved.

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.

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TRD-9006082 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

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462-6420

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**Subchapter R. Professional
Nursing Student Scholarship
Programs**

• **19 TAC §§21.560-21.572**

The Texas Higher Education Coordinating Board Adopts new §§21.560-21.572. Sections 21.563 and 21.566, are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.560-21.562, 21.564, 21.565, and 21.567-21.572, are adopted without changes and will not be republished.

The new sections will provide improvement in the numbers of citizens choosing to become vocational nurses.

The new sections are necessary to implement provisions of Senate Bill 1351, 71st Texas Legislature, 1989. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

Comments were received suggesting that the Coordinating Board use a definition of minority that would refer to most recent federal census data. Section on dissemination of information should include employers and associations of employers. Those who commented against the adoption of the new sections were the Texas Hospital Association and the Texas Health Care Association.

Rather than refer to a federal census, the rules were changed to list specific ethnic groups which were minorities at the time the bill was passed. Employers and associations of employers will be added at the July board meeting through amendments.

The new sections are adopted under the Texas Education Code, §61.656, Texas Civil Statutes, which provides the Coordinating Board with the authority to adopt rules regarding the professional nursing student scholarship programs.

§21.560. Purpose. The purpose of the professional nursing student scholarship programs is to promote the health care and health educational needs of the citizens of Texas.

§21.561. Administration. The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the professional nursing student scholarship programs.

§21.562. Delegation of Powers and Duties. The board delegates to the commissioner of higher education the powers, duties and functions authorized by the Texas Education Code, Chapter 61, Subchapter L as provided in this subchapter.

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

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Financial need—The cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines. The cost of education includes tuition, fees, educational materials, and living expenses.

Half-time student—A student who has been formally admitted to the institution and is enrolled or is expected to be enrolled for a half-time course load as determined by the educational program in which he or she is enrolled.

Minority—A student whose ethnic or racial group is Black (non-Hispanic), Hispanic, American Indian or Alaskan Native, or Asian or Pacific Islander.

Nursing shortage area—A geographic or practice area within the State of Texas that has an acute shortage of professional nurses.

Professional nursing student—A student enrolled in an accredited institution of higher education in Texas in a course of study leading to an initial or an advanced degree in professional nursing.

Program officer—The professional nursing student scholarship programs officer designated by an eligible institution to represent the programs described in this subchapter on that campus.

Resident—A resident of the State of Texas, as determined by the board. Nonresidents eligible to pay resident tuition rates are excluded from these programs.

Rural area—A nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Scholastic ability and performance—Academic credentials of the student, measured (for entering freshmen) by rank in high school graduating class, high school grade point average, and scores on standardized college entrance examinations; or (for continuing or transfer students) by college grade point average.

§21.564. Eligible Institution.

(a) An eligible institution of higher education may be any public institution as defined in the Texas Education Code, §61.003(8) or any nonprofit, independent institution that:

(1) admits as regular students only those persons having a certificate of graduation from a high school providing secondary education or the recognized equivalent of such a certificate;

(2) is legally authorized within the state to provide a program of education beyond the secondary level;

(3) provides an educational program for which it awards a recognized certificate, associate degree, bachelor's degree, or professional degree;

(4) is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(5) has its parent campus in Texas; and

(6) follows the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) The chief executive officer of an eligible institution shall designate a professional nursing student scholarship programs officer. Unless otherwise specified by the chief executive officer of the institution, the director of financial aid shall serve as the professional nursing student scholarship programs officer, shall be the board's on-campus agent to certify all institutional transactions, activities, and reports with respect to the programs described in this subchapter.

§21.565. Advisory Committee. The board shall appoint an advisory committee to advise the board concerning assistance provided under this subchapter to professional nursing students.

(1) The advisory committee consists of:

(A) a chair named by the board;

(B) one representative named by the Texas Nurses Association;

(C) one representative named by the Texas Organization of Nurse Executives;

(D) one representative named by the Board of Nurse Examiners;

(E) a head of each of the three types of professional nursing educational programs, named by the deans and directors of nursing programs in this state;

(F) a representative of graduate nursing education named by the deans and directors of nursing programs in this state;

(G) one representative named by the Texas Health Care Association;

(H) one representative named by the Texas Association of Homes for the Aging.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(3) The duties of the advisory committee shall be to:

(A) advise the board on appropriate rules for the professional nursing student scholarship programs;

(B) advise the board on the priorities of emphasis among the scholarship, matching fund, and loan repayment programs provided for in the Texas Education Code, Chapter 61, Subchapter L;

(C) advise the board on the amount of money needed to fund adequately the professional nursing student scholarship programs;

(D) advise the board on the establishment of priorities among the criteria for consideration of application approval which are named in the Texas Education Code, Chapter 61, Subchapter L and in these rules; and

(E) assist the board in the dissemination of information on the professional nursing student scholarship programs.

§21.566. Scholarship Program Titles and Distinctions.

(a) Three scholarship programs for nursing students are to be administered in accordance with this subchapter. Their titles are the Scholarship Program for Ethnic Minorities in Professional Nursing, the Scholarship Program for Rural Professional Nursing Students, and the Scholarship Program for Licensed Vocational Nurses becoming Professional Nurses.

(b) All three programs will be administered in keeping with this subchapter, except as outlined in paragraphs (1)-(3) of this subsection:

(1) Funds awarded through the Scholarship Program for Ethnic Minorities in Professional Nursing can only go to students who are members of ethnic or racial minority groups in Texas as defined in this subchapter.

(2) Funds awarded through the Scholarship Program for Rural Professional Nursing Students can only go to students who graduated from high schools located in rural areas or who have lived in a rural area of Texas for the 12 months prior to

enrollment in a professional nursing program. Furthermore, rural professional nursing scholarship recipients must be attending a nursing program offered in a rural area of the state. Extended campuses, if in rural locations, are eligible to participate.

(3) Funds awarded through the Scholarship Program for Licensed Vocational Nurses becoming Professional Nurses must go to students who are licensed vocational nurses enrolled in a program leading to licensure as a professional nurse.

§21.567. Eligible Students.

(a) To receive funds through one of the professional nursing student scholarship programs, a student must be a Texas resident enrolled on at least a half-time basis in an eligible institution in a professional nursing program or, (if applying for an award through the Scholarship Program for Licensed Vocational Nurses studying to become professional nurses) be a Licensed vocational nurse enrolled in a program of study leading to licensure as a professional nurse.

(b) In determining student eligibility the board shall consider the following factors relating to each applicant:

- (1) minority status;
- (2) scholastic ability and performance;
- (3) geographical area of nursing practice;
- (4) financial need;
- (5) whether the person received aid to families with dependent children or participates in another public welfare program;
- (6) employment by a state agency;
- (7) employment on a nursing school faculty of an eligible institution; and
- (8) whether the person at the time of application to participate in the scholarship program is a practicing nurse in an area with an acute nursing shortage or is likely to practice in such an area.

§21.568. Funding. Funds awarded through the programs may not exceed the amount appropriated for that purpose by the legislature.

§21.569. Dissemination of Information. The board shall provide for the distribution of information about the scholarship programs established under this subchapter to schools and educational programs and professional associations of vocational and professional nurses.

§21.570. Certification and Disbursement Procedures.

(a) Application submission. Eligible institutions will be asked to submit scholarship applications to the board for eligible students. The number of applications which may be submitted by each school will be determined by the board, and will be based on the relative size of the school's professional nursing student enrollment. The institution will need to specify a priority on each application, and applications will be serviced to the extent possible in priority number order until all funds are exhausted.

(b) Maximum awards. The maximum award for a student through any of the programs is the lesser of:

(1) an amount equal to the student's financial need; or

(2) the program maximum as stated in subparagraphs (A)-(C) of this paragraph:

(A) for the Scholarship Program for Ethnic Minorities in Professional Nursing—\$2,000 per year for those enrolled in an associate degree program and \$3,000 for each student enrolled in a baccalaureate or graduate degree program;

(B) for the Scholarship Program for Licensed Vocational Nurses becoming Professional Nurses—\$1,500 for students enrolled in an associate degree program; \$2,500 for those enrolled in a baccalaureate or graduate degree program;

(C) for the Scholarship Program for Rural Professional Nursing Students—\$1,500 per year for those enrolled in an associate degree program; \$2,000 for each student enrolled in a baccalaureate or graduate degree program.

(c) Funds disbursement. For those students receiving scholarships, the board will request warrants from the State Comptroller's Office. Once the warrants are delivered to the board, they will be forwarded to the institution's business office for disbursement to the student. No warrant shall be released to a student by the institution without confirmation of the student's eligibility for the award at the time of disbursement.

§21.571. Affirmation Forms. Each disbursement of scholarship funds must be documented. An affirmation form, indicating the amount of scholarship being disbursed to a particular student and confirming the student's eligibility must be signed by the receiving student. One copy of the signed affirmation form must be forwarded to the board.

§21.572. Program Review Requirements. Any institution whose stu-

dents receive funds through one or more of the scholarship programs in a year will be subject to a program review.

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.

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TRD-9006081 James McWhorter
Assistant Commissioner for
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Texas Higher Education
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For further information, please call: (512) 462-6420

◆ ◆ ◆
**Subchapter S. Vocational
Nursing Student Scholarship
Programs**

• 19 TAC §§21.590-21.602

The Texas Higher Education Coordinating Board adopts new §§21.590-21.602. Sections 21.593, 21.594, and 21.599, are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.590-21.592, 21.595-21.598, and 21.600-21.602, are adopted without changes and will not be republished.

The new sections will provide improvement in the numbers of citizens choosing to become vocational nurses.

The new sections are necessary to implement provisions of Senate Bill 1351, 71st Texas Legislature, 1989. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

The comments received suggested that the Coordinating Board expand the definition of vocational nursing student to include those enrolled in eligible programs not just eligible institutions. In disseminating information, include employers and groups of employers. Commenting against the adoption of the new sections was the Texas Hospital Association.

The Coordinating Board made changes to the new sections to reflect the comments received.

The new sections are adopted under the Texas Education Code, §61.656, Texas Civil Statutes, which provide the Coordinating Board with the authority to adopt rules regarding the Nursing Student Scholarship Program.

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

Board—The Texas Higher Education Coordinating Board.

Commissioner—The Commissioner of Higher Education, the chief executive officer of the board.

Financial need—The cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines. The cost of education includes tuition, fees, educational materials, and living expenses.

Half-time student—A student who has been formally admitted to an eligible institution or program and is enrolled or expected to be enrolled for a half-time course load as determined by the educational program in which he or she is enrolled.

Minority—A student who belongs to an ethnic or racial group comprising less than 50% of the state's population as revealed by the most recent federal census.

Nursing shortage area—The State of Texas.

Program officer—The vocational nursing student scholarship programs officer designated by an eligible institution to represent the programs described in this subchapter on that campus.

Resident—A resident of the State of Texas, as determined by the board. Nonresidents eligible to pay resident tuition rates are excluded from these programs.

Rural area—A nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Scholastic ability and performance—Academic credentials of the student, measured by high school rank in graduating class or grade point average or GED score and scores on standardized entrance examinations; or, for continuing or transfer students, by college grade point average.

Vocational nursing student—A student enrolled in an eligible institution or program that is preparing the student for licensure as a vocational nurse.

§21.594. Eligible Institutions.

(a) An eligible institution is a non-profit facility which:

(1) offers a program in vocational nursing accredited by the Board of Vocational Nurse Examiners of the State of Texas;

(2) follows the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions; and

(3) has its parent campus in Texas, if an institution of higher education.

(b) The chief executive officer of an eligible institution shall designate a vocational nursing student scholarship programs officer who shall be the board's on-campus agent to certify all institutional transactions, activities, and reports with respect to the programs described in this subchapter. Unless otherwise specified by the chief executive officer of the institution,

the director of financial aid shall serve as the program officer.

§21.599. Dissemination of Information. The board shall publish and disseminate, with the assistance of the advisory committee, information about the licensed vocational nurses' scholarship programs to postsecondary institutions which might offer accredited programs in vocational nursing. In addition, information shall be provided to appropriate state agencies and any interested professional associations of LVNs, employers of LVNs, and associations of employers of LVNs.

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 June 8, 1990.

TRD-9006080 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: July 3, 1990

Proposal publication date: March 9, 1990

For further information, please call: (512) 462-6420

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**Subchapter T. Matching Fund
Employment Program for
Professional Nursing Stu-
dents**

• 19 TAC §§21.620-21.638

The Texas Higher Education Coordinating Board adopts new §§21.620-21.638. Sections 21.623, 21.625, 21.629, 21.632, 21.633, 21.635, 21.637, and 21.638, are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.620-21.622, 21.624, 21.626-21.628, 21.630, 21.631, 21.634, and 21.636 are adopted without changes and will not be republished.

The new sections will provide improvement in the numbers of citizens becoming professional nurses and providing health care in Texas.

The new sections are necessary to implement provisions of Senate Bill 1351, 71st Legislature, 1989. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

Comments suggested that: the Coordinating Board give equal opportunity to nonprofit and for-profit employers to participate; minimum wage for the nurse should be based on starting rate at similar employers in the area; postponement of payments should only occur if the student is continuing nursing studies; have the financial aid officers assist (not oversee) student/employer pairing; eliminate the cosigner requirement for independent students over 21 years of age; add procedures to handle the student who fails the nurse examination twice; add more to the grievance

procedure to protect the student; protect the student from excessive work demands from the employer; and disseminate information to employers and associations of employers.

Those who commented against the adoption of the new sections were: the Texas Hospital Association, the Texas Health Care Association, and the associate dean of a school of nursing.

The Coordinating Board did not disagree and changes were made to the sections.

The new sections are adopted under the Texas Education Code, §61.656, Texas Civil Statutes, which provides the Coordinating Board with the authority to adopt rules regarding the Matching Fund Employment Program for professional nursing students.

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

Advisory Committee—The Advisory Committee to advise the board concerning assistance provided to professional nursing students.

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Cosigner—A person signing a promissory note, other than the loan recipient, who is over 21 years of age and who is gainfully employed full-time or otherwise demonstrates financial responsibility. Such a person may be a relative, except a spouse, and may not be a student. He or she may be a representative of the eligible employer. A cosigner is jointly and severally responsible for all promissory notes issued throughout the program and signed by the maker and him or herself.

Employment program award—A lump-sum monetary award provided students on a term-by-term basis through the employment program, in exchange for which the student is obligated to work for an employer for one year after completion of his or her professional nursing studies. If the terms of the exchange are violated, and the grievance subcommittee determines it is appropriate, the award may be treated as a loan, with repayment required of the student and with interest accruing from the date of award disbursement.

Employment program—The Professional Nursing Student Matching Fund Employment Program.

Financial need—The cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines. The cost of education includes tuition, fees, educational materials, and living expenses.

Grievance subcommittee—A subcommittee appointed by the board to review

documentation and hear grievances raised through channels outlined in this subchapter and to assess penalties as determined appropriate.

Half-time student—A person formally admitted to the institution who is enrolled or expected to be enrolled for a half-time course load as determined by the educational program in which the student is enrolled.

Minority—A student whose ethnic or racial group is Black (non-Hispanic), Hispanic, American Indian or Alaskan Native, or Asian or Pacific Islander.

Nursing shortage area—A geographic or practice area within the State of Texas that has an acute shortage of professional nurses.

Professional nursing student—A student enrolled in an accredited institution of higher education in Texas in a course of study leading to an initial or an advanced degree in professional nursing.

Program officer—The Professional Nursing Student Matching Fund Employment Program officer designated by an eligible institution to represent the program on that campus.

Resident—A resident of the State of Texas as determined by the board. Nonresident students eligible to pay resident tuition rates are excluded from this program.

Rural area—A nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Scholastic ability and performance—Academic credentials of the student, measured (for entering freshmen) by rank in high school graduating class, high school grade point average, and scores on standardized college entrance examinations; or (for continuing or transfer students) by college grade point average.

Sponsoring employer—An eligible employer that has entered into an employment program contract with an eligible student.

§21.625. Eligible Institution.

(a) An eligible institution of higher education may be any public institution as defined in the Texas Education Code, §61.003(8), or any nonprofit independent institution that:

(1) admits as regular students only those persons having a certificate of graduation from a high school providing secondary education or the recognized equivalent of such a certificate;

(2) is legally authorized within the state to provide a program of education beyond the secondary level;

(3) provides an educational program for which it awards a recognized certificate, associate degree, bachelor's degree, or professional degree;

(4) is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(5) provides a professional nursing program which is accredited by the Board of Nurse Examiners for the State of Texas except for graduate programs in professional nursing;

(6) has its parent campus in Texas; and

(7) follows the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) The chief executive officer of an eligible institution shall designate a program officer. Unless otherwise specified by the chief executive officer of the institution, the director of financial aid shall serve as the program officer.

(1) The program officer shall be the board's on-campus agent to certify all institutional transactions, activities, and reports with respect to the program described in this subchapter.

(2) The program officer is responsible for notifying the board should the student drop below half-time enrollment in the relevant program of study, fail to meet academic progress standards for their program of study, or otherwise ceases to be eligible to participate in the employment program.

§21.629. Dissemination of Information. The board shall provide for the distribution of information about the employment program to employers of registered nurses, associations of employers of registered nurses, schools and educational programs for registered nurses, and professional associations of registered nurses.

§21.632. Matching Fund Employment Program Awards. Students participating in the program will receive employment program awards to help meet their costs of education while enrolled in the program of study indicated in their employment contract.

(1) Fifty percent of the funds for the award will be provided by the state; 50% will be provided by the student's sponsoring employer.

(2) The annual maximum award a student may receive (including state and employer funds) is an amount equal to their financial need or the statutory maximum for the program, which is \$2,000 for students enrolled in associate degree programs and \$3,000 for students enrolled in bachelor or graduate degree programs, whichever is less.

(3) The maximum to be awarded a student in a term is equal to the annual maximum divided by the number of terms attended each year by a typical student in that program of study.

(4) To receive the award, the student must enter into a contract with an eligible employer, pledging to work for the employer for one year after completing his or her program of study.

(5) To receive the award, the student must sign and have a cosigner sign a promissory note payable to the Matching Fund Employment Program for Professional Nurses indicating he or she will repay the award and any related expenses should he or she fail to fulfill the contract.

§21.633. The Application Process.

(a) Any employer interested in participating in the employment program will need to provide the program officer at an eligible institution proof that it is an eligible employer.

(b) Any student interested in participating in the employment program will need to provide the program officer:

(1) proof of his or her eligibility to participate; and

(2) the name and address of the person who will cosign the student's promissory note(s).

(c) The program officer at an eligible institution will oversee the pairing of employers and eligible students.

(1) If the employer has a staff member it believes to be a potential candidate for the Matching Fund Employment Program, the employer must provide the program officer proof of the student's acceptance into the relevant nursing program. If the student meets all program requirements, he or she will be paired with the nominating employer.

(2) If the employer does not have an eligible student already selected, the institution's program officer may recommend potential nursing students to the employer for its consideration. Only when the student and employer freely choose to work together, will a pairing become operational.

(d) Once the student and employer have agreed to work together, they will enter into an employment program contract as described in this subchapter.

(e) The program officer will select the students who will receive employment program awards from among all applicants who are eligible.

(f) The program officer will then determine the size of award for which the student is eligible, and notify the employer of the amount to submit to the board as its matching share.

(g) The program officer will then submit to the board:

(1) certification of the student's eligibility;

(2) certification of the employer's eligibility;

(3) a copy of the employment program contract signed by the student and the employer;

(4) the original promissory note signed by the student and the cosigner; and

(5) a recommendation of the size of award to be given the student.

§21.635. The Employment Program Contract. Each participating student must enter into a contract with his or her sponsoring employer.

(1) In the contract, an eligible student or nurse must agree to:

(A) enroll in and actively pursue a course of study endorsed by the sponsoring employer;

(B) work, while enrolled in college, an agreed-upon number of hours, the number and schedules of which are to be negotiated with the sponsoring employer;

(C) notify the board and his/her employer immediately should he/she drop below half-time enrollment in the agreed-upon program of study; fail to maintain academic progress, except that one semester of grace may be extended to students on academic probation during which time the student may receive employment program awards; or otherwise cease to be an eligible student;

(D) sit, if under contract while enrolled in a program leading to licensure as a professional nurse, for the first board examination for which he/she are eligible upon completion of his/her course and clinical work, and if licensure is delayed because of failure to pass the test, agree to retake it the next consecutive time it is offered;

(E) work, upon completion of the professional nursing program in which enrolled while under contract, for the sponsoring employer for one year, such employment to commence within three months of the student's licensure as a professional nurse (if relevant) or within three months of the student's completion of his/her graduate course of study;

(F) comply with the grievance procedures described in this subchapter;

(G) sign a promissory note(s), acknowledging an obligation to repay any funds received through the program should he/she fail to fulfill the terms of the contract; and

(H) meet the satisfactory performance standards of the sponsoring employer.

(2) Eligible employers must agree in the contract to:

(A) provide 50% of the funding for the student's employment program awards;

(B) provide part-time employment to the student that is related to the student's academic interests, the number and schedule of hours to be negotiated with the student;

(C) provide a work schedule for the eligible student that accommodates the student's class and required clinical schedule;

(D) employ the eligible nurse for a 12-month period in a professional nursing position commensurate with his or her education and experience (should the student fail to successfully complete the program of study for which he/she was under contract with the employer, the employer may choose to employ the student in a lesser position, but such employment will not fulfill the employment obligations of the employment program award);

(E) pay the eligible nurse a wage no less than the starting salary reported for that position by the Bureau of Labor Statistics;

(F) comply with the grievance mechanism described in this subchapter;

(G) provide adequate supervision of work performed by the eligible student or nurse and make available to the institution attended by the student and to the board the name of the eligible student or nurse's supervisor;

(H) provide the student a copy of their personnel handbook, outlining grievance procedures for employees;

(I) provide reasonable working conditions and permit the institution and/or the board from time to time as they may request, to inspect the premises in which any eligible student or nurse is working and review with the institution or board the working conditions and job requirements of all such students or nurses; and

(J) notify the student/nurse and the board immediately should they lose

their accreditation or license to operate in the State of Texas.

§21.637. Noncompliance.

(a) Noncompliance of program contract. Should either the student or the employer fail to fulfill any obligation outlined in the employment program contract, they shall be in noncompliance with the contract. Repayment of the employment program award by the student or forfeiture of the student's work obligation to the employer are among the penalties which may be assessed. The assessment of such penalties shall be the responsibility solely of the grievance subcommittee.

(b) Penalties for noncompliance due to death or disability. No penalty shall be assessed the student if his or her employment contract is cancelled due to death or a properly documented disability which would preclude the student/nurse's fulfillment of the contract.

(c) Maximum penalties for the employer. The maximum penalties which may be assessed by the grievance subcommittee for the employer are:

(1) loss of all claim to the funds forwarded to the nurse as employment program awards;

(2) cancellation of the student's obligation to work for the employer after completing his or her educational program; and

(3) continued support for the student/nurse until such time another eligible employer enters into a contract with the student/nurse.

(d) Maximum penalties for the students. The maximum penalties which may be assessed by the grievance subcommittee for the students are:

(1) repayment of any amounts received through employment program awards, plus interest and related charges, in keeping with the promissory note(s) executed under the employment program contract; and

(2) loss of the opportunity to work for the employer after completion of their program of study.

(e) Conversion of employment program award to a loan. If the grievance subcommittee determines the student is no longer in compliance with the contract and repayment of the award is appropriate, the employment program award will be treated as a loan as stated in the signed promissory note.

(1) The interest on the loan shall be simple interest and the interest rate to be charged shall be a fixed rate set from time to time by the commissioner and ratified by the board. Interest shall accrue from the date of disbursement until the loans are either totally repaid or cancelled.

(2) Repayment must begin six months after the student drops below half-time enrollment at an institution of higher education, or three months after the grievance subcommittee reaches its decision, whichever is later.

(3) The board will provide a repayment schedule calling for the minimum payment amount sufficient to repay all amounts awarded under this subchapter over the maximum authorized period. In no case will the minimum annual repayment be less than \$600.

(4) All amounts (plus interest) must be repaid within 10 years of the receipt of the beginning of repayment.

(5) A charge of 5.0% of the monthly payment or \$5.00, whichever is less, shall be assessed on any payment received later than 10 days from the due date of such payment. Such charges shall be collected out of the first payments made in excess of the interest then due.

(6) The cosigner may not be held responsible for the repayment of the loan, accrued interest, and other charges if the borrower dies or becomes disabled and unable to perform the work provided for in the contract.

(f) Postponements. Based on specified evidence, the commissioner may delay the repayment requirements for recipients enrolled on at least a half-time basis at an eligible institution or for recipients suffering extreme financial hardship. Postponements are not included when calculating the maximum repayment period. The commissioner may require payments on the interest being accrued during the time of a postponement.

(g) Enforcement of collection. When any person who has received a loan authorized by this law shall have failed or refused to make as many as six monthly payments due in accordance with a promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The person's name and last known address and other information as requested by the commissioner shall be reported to the attorney general. Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting for him in the county of the person's residence or in Travis County, unless the attorney general shall find reasonable justification for delaying suit and shall so advise the commissioner in writing.

(1) Upon notification by the commissioner of default on a loan made under this subchapter, the educational institution shall cause the records, including transcripts of the award recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the commissioner that such default has been

corrected. Should the default continue beyond at least 60 days from the date suit service was obtained, the commissioner shall cause a judgment to be entered which may be filed in the county records where service was obtained and will release such judgment once the borrower has completed the repayment of the debt as stipulated in the judgment.

(2) In all cases of default, the loan recipient will be responsible for the payment of principal and all accrued charges, including interest, late charges, skiptracing fees, court costs, and attorney fees.

§21.638. Program Review Requirements. Any institution whose students receive funds through the employment program and any employer contracting with a student through the employment program in a year will be subject to an annual program review.

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 June 8, 1990.

TRD-9006079 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: July 3, 1990

Proposal publication date: March 9, 1990

For further information, please call: (512) 462-6420

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**Subchapter U. Matching Fund
Employment Program for
Vocational Nursing Students**

• 19 TAC §§21.650-21.668

The Texas Higher Education Coordinating Board adopts new §§21.650-21.668. Sections 21.653, 21.659, 21.662, 21.663, 21.665, 21.667, and 21.668 are adopted with changes to the proposed text as published in the March 9, 1990, issue of the *Texas Register* (15 TexReg 1259). Sections 21.650-21.652, 21.654-21.658, 21.660, 21.661, 21.664, and 21.666 are adopted without changes and will not be republished.

The new sections will provide improvement in the numbers of citizens becoming vocational nurses and providing health care in Texas.

The new sections are necessary to implement provisions of Senate Bill 1351, 71st Legislature, 1989. The sections will function as administrative guidelines for the Texas Higher Education Coordinating Board.

Comments suggested that the Coordinating Board: eliminate priority for nonprofit employers; provide postponements only for students in nursing programs; use an interest rate not set by the board, and free the board of this task; disseminate information to employers and associations of employers;

employers and associations of employers; have the financial aid officer assist in (not oversee) student/employer pairing; and limit the length of time an employer might have to support a student if the employer wants out of the contract (wording now states "till another eligible employer enters into a contract").

Those who commented against the adoption of the sections were the Texas Hospital Association and the Texas Health Care Association.

The Coordinating Board did not disagree and changes were made to the sections.

The new sections are adopted under the Texas Education Code, §61.656, Texas Civil Statutes, which provides the Coordinating board with the authority to adopt rules regarding the Matching Fund Employment Program for vocational nursing students.

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

Advisory committee—The advisory committee to advise the board concerning assistance provided to vocational nursing students and vocational nurses.

Board—The Texas Higher Education Coordinating Board.

Commissioner—The Commissioner of Higher Education, the chief executive officer of the board.

Cosigner—A person signing a promissory note, other than the award recipient, who is over 21 years of age and who is gainfully employed full time or otherwise demonstrates financial responsibility. Such a person may be a relative, except a spouse, and may not be a student. He or she may be a representative of the eligible employer. A cosigner is jointly and severally responsible for all promissory notes issued throughout the program and signed by the maker and him or herself.

Employment program award—A lump-sum monetary award provided students on a term-by-term basis through the employment program, in exchange for which the student is obligated to work for an eligible employer on a full time basis for one year after completion of his or her vocational nursing studies. If the terms of the exchange are violated, and the grievance subcommittee determines it is appropriate, the award may be treated as a loan, with repayment required of the student and with interest accruing from the date of the award disbursement.

Employment program—The Vocational Nursing Student Matching Fund Employment Program.

Financial need—The cost of education at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines. The cost of education includes tuition, fees, educational materials, and living expenses.

Grievance subcommittee—A subcommittee appointed by the board to assess penalties as appropriate when the employment program contract is broken.

Half-time student—A person who has been formally admitted to an eligible institution or program and is enrolled or expected to be enrolled for a half-time course load as determined by the educational program in which he or she is enrolled.

Minority—A student who belongs to an ethnic or racial group comprising less than 50% of the state's population as revealed by the most recent federal census.

Nursing shortage area—The State of Texas.

Program officer—The vocational nursing student matching fund employment program officer designated by an eligible institution to represent the program on that campus.

Resident—A resident of the State of Texas as determined by the board. Nonresident students eligible to pay resident tuition rates are excluded from this program.

Rural area—A nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Scholastic ability and performance—Academic credentials of the student, measured by high school rank in graduating class or grade point average or GED score and scores on standardized entrance examinations; or, for continuing or transfer students, by college grade point average.

Sponsoring employer—An eligible employer that has entered into an employment program contract with an eligible student.

Vocational nursing student—A student enrolled in an eligible institution or program that is preparing the student for licensure as a vocational nurse.

§21.659. Dissemination of Information. The board shall publish and disseminate, with the assistance of the advisory committee, information about the Matching Fund Employment Program for Vocational Nursing students to postsecondary institutions which offer accredited programs in vocational nursing. In addition, information shall be provided to appropriate state agencies and any interested professional associations of LVNs, employers of LVNs, and associations of employers of LVNs.

§21.662. Matching Fund Employment Program Awards. Students participating in the program will receive employment program awards to help meet their costs of education while enrolled in a vocational nursing program.

(1) Fifty percent of the funds for the award will be provided by the state; 50% will be provided by the student's sponsoring employer.

(2) The annual maximum award a student may receive is an amount equal to his or her financial need or the statutory maximum of \$1,500, (\$750 from the state; \$750 from the employer) whichever is less.

(3) The institution will indicate the amounts and dates for disbursements.

(4) To receive the award, the student must enter into an employment program contract, pledging to work on a full-time basis for an eligible employer for one year after completing his or her program of study.

(5) To receive the award, the student must sign and have a cosigner sign a promissory note payable to the Matching Fund Employment Program for Vocational Nurses indicating he or she will repay the award and any related expenses should he or she fail to fulfill the contract.

§21.663. The Application Process.

(a) Any employer interested in participating in the employment program will need to provide the program officer at an eligible institution proof that it is an eligible employer.

(b) Any student interested in participating in the employment program will need to provide the program officer:

(1) proof of his or her eligibility to participate; and

(2) the name and address of the person who will cosign the student's promissory note(s).

(c) The program officer at an eligible institution will facilitate the pairing of employers and eligible students.

(d) Once the student and employer have agreed to work together, they will enter into an employment program contract as described in this subchapter.

(e) The program officer will select students who will receive employment program awards from among all applicants who are eligible.

(f) The program officer will then determine the size of award for which the student is eligible, and notify the employer of the amount to submit to the board as its matching share.

(g) The program officer will then submit to the board:

(1) certification of the student's eligibility;

(2) certification of the employer's eligibility;

(3) a copy of the employment program contract signed by the student and the employer;

(4) the original promissory note signed by the student and the cosigner; and

(5) a recommendation of the size of award to be given the student.

§21.665. *The Employment Program Contract.* Each participating student must enter into a contract with his or her sponsoring employer.

(1) In the contract, an eligible student or nurse must agree to:

(A) enroll in a vocational nursing program;

(B) work, while enrolled in the program, an agreed-upon number of hours, the number, schedules, and compensation of which are to be negotiated with the employer;

(C) notify the board immediately should he or she cease to be an eligible student;

(D) sit for the first board examination for which the student is eligible upon completion of his or her program of study, and if licensure is delayed because of failure to pass the test, agree to retake it the next consecutive time it is offered;

(E) work as a vocational nurse for the sponsoring employer for one year for a minimum average of 32 hours per week and a maximum of 40 hours per week (excluding overtime), such employment to commence at a time agreed upon by the student and employer, but no later than one month after graduation;

(F) comply with the grievance procedures described in this subchapter;

(G) sign a promissory note(s), indicating an obligation to repay any funds received through the employment program should the student fail to fulfill the terms of the contract; and

(H) meet the satisfactory performance standards of the sponsoring employer.

(2) Eligible employers must agree in the contract to:

(A) provide 50% of the funding for the student's employment program award(s);

(B) provide part-time employment to an eligible student;

(C) provide a work schedule for the student that accommodates the student's class and/or required clinical schedule;

(D) employ the eligible nurse for one year in a nursing position commensurate with his or her education and experience;

(E) pay the eligible nurse a wage no less than the starting salary reported for that position by the Bureau of Labor Statistics;

(F) comply with the grievance mechanism described in this subchapter;

(G) provide the student a copy of their personnel handbook, outlining grievance procedures for employees;

(H) provide adequate supervision of work performed by the eligible student or nurse;

(I) provide reasonable working conditions and permit the institution and/or the board from time to time as they may request, to inspect the premises in which any eligible student or nurse is working for the purpose of reviewing with the institution or board the working conditions and job requirements of all such students or nurses;

(J) notify the student/nurse and the board immediately should they lose their accreditation or license to operate in the State of Texas; and

(K) notify the board when the eligible nurse has fulfilled his or her one-year work commitment.

§21.667. *Noncompliance.*

(a) Noncompliance of program contract. Should either the student or the employer fail to fulfill any obligation outlined in the employment program contract, noncompliance will exist. Repayment of the employment program award by the student or forfeiture of the student's work obligation to the employer may be required. The assessment of such penalties shall be the responsibility solely of the grievance subcommittee.

(b) Penalties for noncompliance due to death or disability. No penalty shall be assessed the student if his or her employment contract is cancelled due to death or a properly documented disability which would preclude the student/nurse's fulfillment of the contract.

(c) Maximum penalties for the employer. The maximum penalties which may be assessed by the grievance subcommittee for the employer are:

(1) loss of all claim to the funds forwarded to the student as employment program awards;

(2) cancellation of the student's obligation to work for the employer after completing his or her educational program; and

(3) continued support for the student/nurse until such time another eligible employer enters into a contract with the student/nurse.

(d) Maximum penalties for the student. The maximum penalties which may be assessed by the grievance subcommittee for the student are:

(1) repayment of any amounts received through employment program awards, plus interest and related charges in keeping with the promissory note executed under the employment program contract; and

(2) loss of the opportunity to work for the employer after completion of his or her program of study.

(e) Treatment of an employment program award as a loan. If the grievance subcommittee determines the student is no longer in compliance with the contract and repayment of the award is appropriate, the employment program award will be treated as a loan as stated in the promissory note.

(1) The interest on the loans shall be simple interest and the interest rate to be charged shall be a fixed rate set from time to time by the commissioner and ratified by the board. Interest shall accrue from the date of disbursement until the loans are either totally repaid or cancelled.

(2) Repayment must begin six months from the point of noncompliance.

(3) The board will provide a repayment schedule calling for the minimum payment amount sufficient to repay all amounts awarded under this subchapter over the maximum authorized period. In no case will the minimum annual repayment be less than \$600.

(4) All amounts (plus interest) must be repaid within 10 years of the beginning of repayment.

(5) The commissioner may postpone required periodic installments of principal and any accrued interest during any repayment period. These deferment periods are not included when calculating the maximum repayment period. The commissioner may require payments in the interest being accrued during the time of a postponement.

(6) A charge of 5.0% of the monthly payment or \$5.00, whichever is less, shall be assessed on any payment received later than 10 days from the due date of such payment. Such charges shall be collected out of the first payments made in excess of the interest then due.

(7) The debt is cancelled if the borrower dies or becomes totally and permanently disabled.

(f) Enforcement of collection. When any person who has received a loan authorized by this law shall have failed or refused to make as many as six monthly payments due in accordance with a promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The person's name and last known address and other information as determined by the commissioner shall be reported to the attorney general. Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting for him in the county of the person's residence or in Travis County, unless the attorney general shall find reasonable justification for delaying suit and shall so advise the commissioner in writing.

(1) Upon notification by the commissioner of default on a loan made through this subchapter, the educational institution shall cause the records, including transcripts of the award recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the commissioner that such default has been corrected. Should the default continue beyond at least 60 days from the date suit service was obtained, the commissioner shall request that a judgment be entered which may be filed in the county records where service was obtained and will release such judgment once the borrower has completed the repayment of the debt as stipulated in the judgment.

(2) In all cases of default, the loan recipient will be responsible for the payment of principal and all accrued charges, including interest, late charges, skiptracing fees, court costs, and attorney fees.

§21.668. Program Review Requirements. Any institution whose students receive funds through the employment program and any employer contracting with a student through the employment program in a year will be subject to an annual program review.

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 June 8, 1990.

TRD-9006078 James McWhorter
Assistant Commissioner
Texas Higher Education
Coordinating Board

Effective date: July 3, 1990

Proposal publication date: March 9, 1990

For further information, please call: (512) 462-6420

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance

Subchapter T. Minimum Standards for Medicare Supplement Policies

• 28 TAC §§3.3306, 3.3308, 3.3312

The State Board of Insurance adopts amendments to §§3.3306, 3.3308, and 3.3312 without changes to the proposed text as published in the May 1, 1990, issue of the *Texas Register* (15 TexReg 2495).

Sections 3.3306, 3.3308, and 3.3312 concern Medicare supplement insurance policies. The amendments result in changes to the minimum benefit standards stated in §3.3306, to the required disclosure provisions recited in §3.3308, and to the transitional requirements for the conversion of Medicare supplement insurance benefits stated in §3.3312. The amendments to the sections are necessary to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums, and effective disclosure thereof, by licensed insurers, by companies subject to the Insurance Code, Chapter 20, and by health maintenance organizations, due to changes to the Federal Medicare Program occasioned by the repeal of the Medicare Catastrophic Coverage Act of 1988 by the Medicare Catastrophic Coverage Repeal Act of 1989 (MCCRA), House Resolution 3607, as technically corrected by House Concurrent Resolution 241.

The amendment to §3.3306 revises the minimum benefit standard requirements in accordance with MCCRA pertaining to coverages for expenses which must be included in Medicare supplement policies or certificates in order to qualify the product as a certified Medicare supplement insurance policy under federal law. The amendment to §3.3308 deletes the requirement for annual notice to policyholders about changes in Medicare and Medicare insurance for certain years subsequent to passage, which requirement was obviated by passage of the MCCRA. The amendments to §3.3312 provides for revisions to the transition rule to conform to the Federal Medicare Program revisions occasioned by the MCCRA and requires the adjustment of minimum benefits for Medicare supplement policies by restoring benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 and the effective and timely disclosure thereof. The amendment to the section also provides for a required notice to be issued to former policyholders to reinstitute coverage substantially equivalent to coverage in effect before the date of termination of the policy and provides for appropriate premium adjustments necessitated by the enactment of the MCCRA.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Insurance Code, Article 3.74, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The

Insurance Code, Article 3.74, §2(c) and (f), provides that the State Board of Insurance shall issue reasonable rules to establish specific standards for provisions of Medicare supplement policies including requirements that are at least equal to those required by federal law, rules, regulations, and standards. Article 3.74, §10, provides that the State Board of Insurance may adopt rules in accordance with federal law regulating Medicare supplement policies and any other reasonable rules that are necessary and proper to carry out Article 3.74, concerning Medicare supplement insurance and policies. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedure for adoption of rules by a state administrative agency.

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 June 12, 1990.

TRD-9006098 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: July 3, 1990

Proposal publication date: May 1, 1990

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Client-managed Attendant Services

The Texas Department of Human Services (DHS) adopts amendments to §§48.2601-48.2605, 48.2611, and 48.9302. Section 48.2601 and §48.9302 are adopted with changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2271). Sections 48.2602-48.2605, and 48.2611 are adopted without changes and will not be republished.

The amendments are justified to clarify the conditions under which health-related tasks may be provided by attendants under standing physician's orders, to increase the monthly income deduction for consistency with other programs with copayments, and to clarify contractors' responsibilities.

The amendments will function by providing the basis for the standard provision of health-related tasks which will enable physically disabled people to remain in the community.

The department received one written comment during the public comment period. The Visiting Nurse Association of Dallas requested standards for training and

supervision of attendants. The department is not revising the amendment in response to this comment because the presupposition of client-managed services is that people who are appropriate for this service are capable of training their attendants to perform needed tasks and also capable of supervising the attendants in the provision of the task. Furthermore, health-related tasks listed in §48.2601(4) and §48.9302(a)(7)(A) of the proposed sections cannot be provided to a client unless a physician delegates the specific tasks to a specific attendant, as allowed by the Medical Practice Act, §3.06(d) (Texas Civil Statutes, Article 4495b.). The provider agency ensures that the client has standing physician's orders delegating these tasks to the attendant to perform before the agency includes them in the client's service plan.

The department is making minor editorial changes to §48.2601(a) and §48.9302(a).

• **40 TAC §§48.2601-48.2605, 48.2611**

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.

§48.2601. Program Services.

(a) Eligible clients are entitled to the following attendant services.

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

(3) Personal care. Personal care services include assistance with activities related to the care of the client's physical health, such as the following:

(A)-(H) (No change.)

(I) toileting;

(J) (No change.)

(K) changing an external catheter;

(L) inserting a nonprescribed suppository into a normal rectum to cause a bowel movement;

(M) using external manual manipulation to cause bowel movement;

(N) changing a sanitary napkin;

(O) inserting and removing a tampon;

(P) providing ileostomy care (removing and disposing old bag and reapplying the new bag); or

(Q) providing colostomy care (removing and disposing old bag and reapplying the new bag).

(4) Health-related services requiring physician's orders. Health-related services requiring standing physician's orders authorizing the client's specific attendant(s) to perform specific delegated tasks are the following:

(A) internal catheter care, including insertion, irrigation, and changing;

(B) administration of oral or external medications;

(C) bowel program, including insertion of prescribed suppository, cleansing enema;

(D) decubitus care, Stages I and II; and

(E) changing sterile dressings.

(b) (No change.)

§48.2602. Client Eligibility Criteria. To be determined eligible for participation in the client-managed attendant services program, the applicant must:

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

(3) not receive primary home care, family care, residential care (supervised living services and emergency care), foster care, or special services to the handicapped-attendant services while receiving client-managed attendant services;

(4)-(6) (No change.)

(7) reside in one of the contract areas established as part of a procurement for client-managed attendant services.

§48.2603. Contractor Responsibilities. The contractor has the following responsibilities after interviewing the applicant:

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

(5) verifying that there are standing physician's orders in accordance with the Texas Medical Practices Act and all related state and federal statutes and regulations if the attendant(s) provides the client any of the health-related services specified in §48.2601(a)(4) of this title (relating to Program Services). The contractor must maintain a copy of the standing physician's orders in the client's file.

§48.2604. Applicant/Client Responsibilities. The applicant/client is responsible for:

(1)-(8) (No change.)

(9) obtaining standing physician's orders when any of the health-related services specified in §48.2601(a)(4) of this title (relating to Program Services) are authorized in the service plan. Standing physician's orders are orders from the client's physician specifying the following:

(A) the delegated health care tasks;

(B) the attendant(s) to whom the procedures are delegated; and

(C) the patient's name.

§48.2605. Suspension of Services.

(a) (No change.)

(b) Suspension may occur for one of the following reasons.

(1) (No change.)

(2) The client receives primary home care, family care, residential care (supervised living services and emergency care), foster care, or special services to the handicapped-attendant services.

(3)-(6) (No change.)

(c) (No change.)

§48.2611. Allowable Monthly Deductions. Allowable monthly deductions from the applicant's/client's monthly total income include the following:

(1) (No change.)

(2) ninety-three dollars deducted for the applicant/client, spouse, and each dependent supported by the applicant/client and spouse;

(3) (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 June 12, 1990.

TRD-9006171

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: August 1, 1990

Proposal publication date: April 20, 1990

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



Minimum Standards for
Agencies Contracted to
Provide Special Services for
Handicapped Adults
40 TAC §48.9302

The amendment is 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.

§48.9302. Additional Standards Applicable to Contracted Agencies Providing Services in a 24-Hour Attendant Service Setting or Day Care Facility.

(a) Twenty-four-hour attendant service setting. The contracted agency must:

(1)-(6) (No Change.)

(7) verify that there are standing physician's orders in accordance with the Texas Medical Practices Act and all state and federal statutes and regulations if the attendant(s) provides the client certain health-related services. Standing physician's orders are orders from the client's physician specifying the delegated health care tasks, the attendant(s) to whom the procedures are delegated, and the patient's name. The contractor must maintain a copy of the standing physician's orders in the client's file.

(A) Health-related services requiring standing physician's orders are the following:

(i) internal catheter care, including insertion, irrigation, and changing;

(ii) administration of oral or external medications;

(iii) bowel program, including insertion of prescribed suppository, cleansing enema;

(iv) decubitus care, Stages I and II; and

(v) changing of sterile dressings.

(B) Health-related services that do not require standing physician's orders include, but are not limited to, the following:

(i) assisting with self-administered medication;

(ii) changing an external catheter;

(iii) inserting a non-prescribed suppository into a normal rectum to cause a bowel movement;

(iv) using external manual manipulation to cause bowel movement;

(v) changing a sanitary napkin;

(vi) inserting and removing a tampon;

(vii) ileostomy care (removing and disposing old bag and reapplying the new bag); or

(viii) colostomy care, removing and disposing old bag and reapplying the new bag.

(b) (No change.)

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

Issued in Austin, Texas, on June 12, 1990.

TRD-9006172

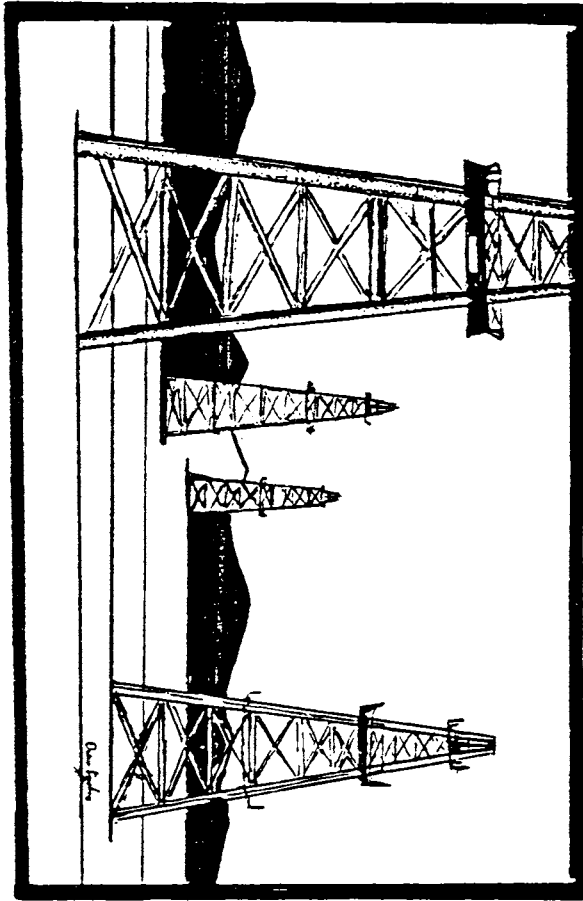
Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: August 1, 1990

Proposal publication date: April 20, 1990

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

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Open Meetings

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

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

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

Texas Air Control Board

Friday, June 22, 1990, 8:30 a.m. The Budget and Finance 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 meet to review and discuss consideration to adopt proposed budget for the 1992 and 1993 biennium; discussion and consider the contract to provide staff assistance for urban airshed modeling.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711

Filed: June 13, 1990, 1:57 p.m.

TRD-9006140

Friday, June 22, 1990, 9:30 a.m. The Regulation Development 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 meet to review and discuss consideration to adopt proposed revisions to regulation V; review and discuss consideration to adopt proposed revisions to regulation XI; and contract to provide staff assistance for Urban Airshed Modeling.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

Filed: June 13, 1990, 1:57 p.m.

TRD-9006139

Friday, June 22, 1990, 10:30 a.m. The Texas Air Control Board will meet at TACB Auditorium, 6330 Highway 290 East, Austin. According to the agenda summary, the board will meet to discuss approval of minutes of May 18, 1990 meeting, reports, discuss consideration and action on proposed rules, consideration and action on proposed agency contract, consideration and action on proposed agency budget request, enforcement report, agreed enforcement orders, and new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

Filed: June 13, 1990, 1:57 p.m.

TRD-9006141

Texas Education Agency

Thursday, June 14, 1990, 9 a.m. The Master Teacher Appraisal Advisory Committee of the Texas Education Agency held an emergency meeting at the Crystal Room, Driskill Hotel, 6th and Congress, Austin. According to the agenda summary, the committee discussed the development of the master teacher appraisal system; discussion of the master teacher legislative mandate; discussion of the master teacher examination; RFP for Texas teacher appraisal system and career ladder; results of the master appraisal data analysis; and strategies for the further development and implementation of the master teacher appraisal system. The emergency status was necessary because the agency finds it is urgent public necessity for this meeting to be held to provide information to the State Board of Education in July in order to continue the development of the Master Teacher Appraisal System.

Contact: Lynda Haynes, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9332.

Filed: June 13, 1990, 4:20 p.m.

TRD-9006170

Tuesday, June 19, 1990, 10 a.m. The Commissioner's Advisory Council for Regional Services-Committee for Research and Development of the Texas Education Agency will hold an emergency meeting in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will discuss the public education information management system; review of action taken by the State Board of Education; and discussion of computer services to school districts. The emergency status was necessary because the agency finds it is of urgent public necessity for this meeting to be held to develop activities and programs to be approved in July to be in place for the 1990-1991 school year.

Contact: J. Robert Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: June 13, 1990, 4:25 p.m.

TRD-9006168

Tuesday, June 19, 1990, 1:30 p.m. The Commissioner's Advisory Council for Regional Services-Committee for Curriculum and Personnel Development of the Texas Education Agency will hold an emergency meeting in Room 1-109, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review action taken by the State Board of Education; and discussion of TEA/ESC (Education Service Center) efforts for curriculum and personnel development. The emergency status was necessary because the agency finds it is of urgent public necessity for this meeting to be held to develop activities and programs to be approved in July to be in place for the 1990-1991 school year.

Contact: J. Robert Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: June 13, 1990, 4:25 p.m.

TRD-9006164

Tuesday, June 19, 1990, 1:30 p.m. The Commissioner's Advisory Council for Regional Services-Committee for Accreditation of the Texas Education Agency will hold an emergency meeting in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review action taken by the State Board of Education; and discuss issues related to the provision of training services to school districts. The emergency status was necessary because the agency finds it is of urgent public necessity for this meeting to be held to develop activities and programs to be approved in July to be in place for the 1990-1991 school year.

Contact: J. Robert Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: June 13, 1990, 4:25 p.m.

TRD-9006169

Tuesday, June 19, 1990, 1:30 p.m. The Commissioner's Advisory Council for Regional Services-Committee for Operations and Service/Special Programs of the Texas Education Agency will hold an emergency meeting in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will review action taken by the State Board of Education; and discuss issues related to the education service center comprehensive plan and application. The emergency status was necessary because the agency finds it is of urgent public necessity for this meeting to be held to develop activities and programs to be approved in July to be in place for the 1990-1991 school year.

Contact: J. Robert Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: June 13, 1990, 4:21 p.m.

TRD-9006165

Wednesday, June 20, 1990, 8:30 a.m. The Commissioner's Advisory Council for Regional Services of the Texas Education Agency will hold an emergency meeting in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will hear committee reports, and comments from the commissioner of education. The emergency status was necessary because the agency finds it is of urgent public necessity for this meeting to be held to develop activities and programs to be approved in July to be in place for the 1990-1991 school year.

Contact: J. Robert Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9371.

Filed: June 13, 1990, 4:21 p.m.

TRD-9006166

Thursday, June 21, 1990, 9:30 a.m. The Teachers' Professional Practices Commission of Texas of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear minutes of January 30, 1990, meeting; consideration of jurisdictional appeal: Flores vs. J. Salinas, en banc, Flores vs. A. Garza, en banc, Flores vs. J. Guerra, en banc; Flores vs. P. Salinas, en banc; consideration of Dismissal: Dixon vs. Miller, Collins vs. Middlebrooks, Collins vs. Milligan, Collins vs. Moliner; discussion of hearing panel: Villanueva vs. Friend, Littleton vs. Peterson; discussion of proposed rule on attorney's arguments in jurisdictional appeals; discussion of disposition of complaint files; directors report; report on reappointments of commission members; and setting of next meeting date.

Contact: Edward M. Vodicka, 1701 North

Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: June 13, 1990, 4:25 p.m.

TRD-9006167

Employees Retirement System of Texas

Thursday, June 21, 1990, 9 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet at the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the committee will recognize visitors and guests; approve minutes from previous meeting; ERS update; hear subcommittee reports; discuss other related insurance matters; and adjourn.

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78701, (512) 476-6431.

Filed: June 12, 1990, 1:44 p.m.

TRD-9006076

Friday, June 22, 1990, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet in the ERS Board Room, ERS Building, 18th and Brazos; Austin. According to the complete agenda, the board will go into executive session to discuss consideration of appointment of an executive director.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 476-6431, ext. 213.

Filed: June 14, 1990, 9:45 a.m.

TRD-9006176

Texas Employment Commission

Thursday, June 21, 1990, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will meet to discuss prior meeting notes; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 25; and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: June 13, 1990, 3:01 p.m.

TRD-9006149

Texas Heroes Monument Commission

Friday, June 15, 1990, 3 p.m. The Workshop of the Texas Heroes Monument Commission held an emergency meeting in the Caduceus Room, 301 University, UTMB Administrative Building, Galveston. According to the complete agenda, the commission heard the secretary and treasurer reports, discussion and reports; set date and site of next meeting. The emergency status was necessary for the convenience of commissioners.

Contact: Cindy Sullivan, 51 Colony Park Circle, Galveston, Texas 77551, (409) 744-5632.

Filed: June 14, 1990, 8:56 a.m.

TRD-9006175

State Department of Highways and Public Transportation

Thursday, June 21, 1990, 9:30 a.m. The State Highway and Public Transportation Commission will meet at Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Room 101-A, 1st Floor, Austin. According to the agenda summary, the commission will meet to discuss approval of minutes; execute contract awards, routine minute orders and resolutions. Authorize: construction, bridge and rehabilitation projects/programs; right-of-way lease; project overruns; designation of business routes; creation of new transportation corporation; anti-litter public education advertising contract; and landscape incentive awards program; emergency and proposed adoption: repeal of 43 TAC §17.66-17.67, new §17.67, and amendments to §21.33; receive/discuss staff reports, including Ft. Worth District programs; consider: SDHPT tactical plan; and position on proposed landfill near Brenham, Washington County; executive session, if needed, for advice from counsel on litigation and attorney-client matters; real property acquisitions; and for staff conference to receive information.

Contact: Robert E. Shaddock, 11th and Brazos, Austin, 78701-2483, (512) 463-8616.

Filed: June 13, 1990, 1:53 p.m.

TRD-9006137

House of Representatives

Friday, June 22, 1990, 2 p.m. The House Committee on House Redistricting of the House of Representatives will meet at the John Gray Institute Auditorium, Lamar University, Beaumont. According to the com-

plete agenda, the committee will take public testimony on congressional, legislative and state board of education redistricting topics for the 991 redistricting effort; they will hold a hearing at 6:30 p.m.

Contact: Brian Jammer, P.O. Box 2910, Austin, Texas 78769-2910, (512) 463-9948.

Filed: June 12, 1990, 3:07 p.m.

TRD-9006095

Saturday, June 23, 1990, 10:30 a.m. The House Committee on House Redistricting of the House of Representatives will meet at the Jean Brown Theater, Wise Cultural Arts Center, Tyler Junior College, Tyler. According to the complete agenda, the committee will take public testimony on congressional, legislative and state board of education redistricting topics for the 1991 redistricting effort.

Contact: Brian Jammer, P.O. Box 2910, Austin, Texas 78769-2910, (512) 463-9948.

Filed: June 12, 1990, 3:07 p.m.

TRD-9006094

Texas Department of Human Services

Friday, June 22, 1990, 8:30 a.m. The Council of Child Welfare Boards/CPS Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st, 1st Floor, East Tower, Public Hearing Room, Austin. According to the agenda summary, the committee will welcome and introduce new members; approve minutes; election of officers; release of de-identification of adoption records for sharing with prospective adoptive parents; update on child at Risk Field Pilot.

Contact: Meloye Fleming, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3412.

Filed: June 12, 1990, 4:12 p.m.

TRD-9006100

State Board of Insurance

Thursday, June 21, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the commissioners will conduct a public hearing to consider the approval of amendment to the articles of agreement of American General Lloyds, Houston, increasing the guaranty fund, changing the attorney-in-fact, substituting the underwriters, and changing the name and the principal office.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:05 p.m.

TRD-9006154

Thursday, June 21, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the commissioners will conduct a public hearing to consider the application of Maryland Casualty Company, Baltimore, Maryland, to acquire control of American General Lloyds, Houston.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:06 p.m.

TRD-9006153

Thursday, June 21, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the commissioners will meet to conduct a public hearing to consider the application of Jelili Olaose Giwa, Houston, for a resident insurance adjuster's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:05 p.m.

TRD-9006155

Thursday, June 21, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 414, Austin. According to the complete agenda, the commissioners will meet to conduct a public hearing to consider whether disciplinary action should be taken against James Burson Lowry, Forney, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II insurance agent's license issued by the State Board of Insurance.

Contact: Will McCann, 1110 San Jacinto, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:05 p.m.

TRD-9006156

Friday, June 22, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the commissioners will meet to conduct a public hearing to consider the application of Conseco, Inc. and Conseco Partnership Management, Inc., Indiana corporations, Conseco Partnership Management Company, L.P., an Indiana limited partnership, Conseco Capital Partners GARCO acquisition corporation and GARCO holding corporation, Delaware corporations, and General Electric Capital Corporation, a New York corporation, to acquire control of

LIC Life Insurance Company, Dallas, and its wholly-owned subsidiary, Great American Reserve Insurance Company, Dallas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5. The hearing will also consider the issuance of surplus debentures in the principal amounts of \$75 million, \$23 million, and \$24 million, respectively, by LIC Life Insurance Company to GARCO holding corporation, the purchase redemption by Great America Reserve Insurance Company of 2,536 shares of preferred stock owned by LIC Life Insurance Company for \$20,811,600; and, the purchase or redemption of 2,000 shares of preferred stock and 100,000 shares of common stock of LIC Life Insurance Company for an aggregate consideration of \$145,000,000, pursuant to the provisions of Texas Insurance Code, Articles 1.29, 21.49-1 §4, 3.11, 21.31, and 21.32.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:05 p.m.

TRD-9006157

Friday, June 22, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the complete agenda, the commissioners will meet to conduct a public hearing to consider whether disciplinary action should be taken against Richard Sommers Moreland, Jr., Dallas, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the State Board of Insurance.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: June 13, 1990, 4:05 p.m.

TRD-9006158

Lamar University System Board of Regents

Thursday, June 14, 1990, 1 p.m. The Board of Regents of the Lamar University System Board of Regents held an emergency meeting at John Gray Institute-Map Room, 855 Florida, Beaumont. According to the emergency revised agenda the board heard chairman's and chancellor's comments, considered recommendations of development/public relations committee, athletic committee, building and grounds committee, finance and audit committee, and personal recommendations; considered appointment of athletic director at Lamar-Beaumont and president at Lamar-Orange. The emergency status was necessary to complete critical personnel selection process prior to Fall 1990 semester.

Contact: George McLaughlin, P.O. Box

11900, Beaumont, Texas 77710.

Filed: June 13, 1990, 4:58 p.m.

TRD-9006163

Texas Commission on Law Enforcement Officer Standards and Education

Friday, June 29, 1990, 9 a.m. The Design Subcommittee of the Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will hear program administrator's report; discussion and action on design competition procedures; and adjourn.

Contact: Tommy Honeycutt, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: June 12, 1990, 10:55 a.m.

TRD-9006072

Friday, June 29, 1990, 1:30 p.m. The Funding Subcommittee of the Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will hear program administrator's report; discussion and action on funding activities; and adjourn.

Contact: Tommy Honeycutt, 1606 Headway Circle, Suite 100, Austin, Texas 78754, (512) 834-9222.

Filed: June 12, 1990, 10:55 a.m.

TRD-9006071

Texas Parks and Wildlife Department

Wednesday, June 20, 1990, 10 a.m. The Texas Parks and Wildlife Commission will meet at the Parks and Wildlife Headquarters, Complex Building B, 4200 Smith School Road, Austin. According to the agenda summary, this will be a closed meeting to consider candidates for executive director position.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: June 12, 1990, 2:40 p.m.

TRD-9006077

Texas State Board of Pharmacy

Thursday, June 14, 1990, 10 a.m. The Texas State Board of Pharmacy met in an emergency meeting at the Pharmacy Board

Room, 8505 Cross Park Drive, Suite 110, Austin. According to the complete agenda, the board conducted a telephonic conference to consider the motion for rehearing in the matter of the Texas State Board of Pharmacy vs. Robert J. (Jeff) Young. The Texas Administrative Procedures and Texas Register Act gives the board a limited amount of time to respond to a request for a motion for rehearing. The time limit for the board to consider the request in this matter expires on June 16, 1990.

Contact: Fred S. Brinkley, Jr., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754-4533, (512) 832-0661.

Filed: June 13, 1990, 10:43 a.m.

TRD-9006122

Texas State Board of Public Accountancy

Thursday, June 21, 1990, 9 a.m. The Behavioral Enforcement of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee will discuss May and June status report; recommendations regarding specific complaints-licensees: complaint numbers 90-03-05L; 90-04-10L; 90-03-16L; 90-03-12L; 90-02-11L; 90-01-22L; 89-12-19L; 90-02-10L; 90-03-07L; 89-10-16L; 90-03-03L; 89-10-38L; 89-10-39L; 89-10-40L; 90-03-21L; 90-03-26L; 90-02-08L; discussion items: complaint number 90-03-17N; Davis; Fields; Frasier; Greer; Howard; Lesnek; Miller; complaint number 88-07-14L; complaint number 88-07-14L; Pressler; Royston; Shouse; Sugg; Wetzel and review of backlog of complaints.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: June 12, 1990, 1:58 p.m.

TRD-9006087

Thursday, June 21, 1990, 10 a.m. The Informal Conferences of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the complete agenda, the committee will hold informal conferences on complaint numbers 89-06-14L; 89-12-11L; 89-06-13L; 89-03-23L; 89-11-13L; 89-06-05L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: June 12, 1990, 1:58 p.m.

TRD-9006088

Public Utility Commission of Texas

Monday, June 25, 1990, 9 a.m. The Hearings Division of the Public Utility Commission will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 9427 to review application of Lower Colorado River Authority for authority to change rates.

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

Filed: June 13, 1990, 3:40 p.m.

TRD-9006151

Monday, June 25, 1990, 1:30 p.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 commission has scheduled a prehearing conference in Docket Number 9569 to review Southwestern Public Service Company's petition for a declaratory order, complaint against Lighthouse Electric Cooperative, Inc., and application to amend certificated service area boundaries.

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

Filed: June 13, 1990, 3:40 p.m.

TRD-9006150

State Purchasing and General Services Commission

Thursday, June 21, 1990, 9 a.m. The State Purchasing and General Services Commission will meet at the Central Services Building, 1711 San Jacinto, Room 402, Austin. According to the complete agenda, the commission will discuss consideration of authorizing publication in the Texas Register of proposed amendments to §113.2 and §113.3 regarding restrictive specifications; monthly 309 report; monthly construction project report; monthly operating budget report; monthly division activity report; executive session to consider the status of the potential purchase of real property pursuant to the provisions of Texas Civil Statutes, Article 601b, executive session to receive a report from counsel concerning the status of all pending litigation.

Contact: John R. Neel, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446.

Filed: June 13, 1990, 9:06 a.m.

TRD-9006134

Texas Real Estate Commission

Wednesday, June 20, 1990, 9 a.m. The Texas Real Estate Commission will meet at the Worthington Hotel, Red Oak Room, 200 Main Street, Fort Worth. According to the agenda summary, the commission will meet to approve minutes of May 21, and June 11, 1990, commission meeting; discuss staff reports for month of April, 1990; discussion of appraiser certification matters; discussion and possible action to approve for publication of new 22 TAC §§544.1-544.9, relating to certification of real estate appraisers; discussion and possible action to approve MCE providers, courses, or instructors; possible action to approve for publication proposed amendments to 22 TAC §531.18, relating to consumer information and to 22 TAC §535.73(c), relating to audits of MCE courses; discussion of 22 TAC §537.11 relating to computer reproduction of contract forms; broker-lawyer committee-TREC liaison discussion; executive to discuss pending litigation and personnel matters pursuant to §2(e) and §2(g), Article 6252-17, Texas Civil Statutes; authorization for payment of claims against the Real Estate Recovery Fund without contest; motions for rehearing and/or probation; entry of orders in contested cases.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: June 12, 1990, 4:20 p.m.

TRD-9006101

School Land Board

Thursday, June 21, 1990, 10 a.m. The School Land Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will meet to discuss approval of minutes of the previous board meeting; consideration of additional tracts, terms and conditions for the August 7, 1990, special oil and gas lease sale; pooling applications, Wesson Smackoyer Field, Rains and Van Zandt Counties; Stimmel (Outlar) Field, Wharton County; commercial lease applications, Neches River, Jefferson County, coastal public lands-Copano Bay, Aransas County; excess acreage applications, and Uvalde County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, 78701, (512) 463-5016.

Filed: June 13, 1990, 4:23 p.m.

TRD-9006160

State Property Tax Board

Friday, June 22, 1990, 1 p.m. The State Property Tax Board will meet at 4301

Westbank Drive, Building B, Suite 100, Austin. According to the agenda summary, the board will meet to receive and accept resignation of Executive Director Jim Robinson, who has been appointed Chief Appraiser of Harris County Appraisal District; discussion of agency financial and administrative matters; legislative appropriations request for FY 1992-93; executive session: as permitted by Texas Civil Statutes, Art. 6252-17, Subsections (e) and (g) to confer with attorney regarding contemplated or pending litigation and to discuss personnel matters; and possible action on personnel matters.

Contact: Jim Robinson, 4301 Building B, Suite 100, Austin, Texas 78746-6565, (512) 329-7800.

Filed: June 13, 1990, 9:54 a.m.

TRD-9006120

University of Texas System

Thursday, June 14, 1990, 10 a.m. The Board of Regents and Standing Committees of the University of Texas System met in the Regents' Meeting Room, Ninth Floor, 201 West 7th Street, Ashbel Smith Hall, Austin. According to the complete emergency revised agenda, the committees met to consider proposed acquisition of real estate adjacent to the campus of The University of Texas at Arlington. The emergency status was necessary because negotiations for this property were ready for board consideration and a rapid response was essential to the conclusion of the sale.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: June 12, 1990, 1:14 p.m.

TRD-9006075

University of Texas Health Science Center at San Antonio

Wednesday, June 20, 1990, 3 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet in the Dental Dean's Conference Room 4.320R, 7703 Floyd Curl Drive, San Antonio. According to the agenda summary, the committee will approve minutes; protocols for review; hear subcommittee reports; attend other business-clarification of OPRR protocol review guidelines.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284, (512) 567-3717.

Filed: June 12, 1990, 3:20 p.m.

TRD-9006096

Texas Water Commission

Wednesday, June 13, 1990, 3 p.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress, Room 118, Austin. According to the emergency revised agenda summary, the board discussed consideration of various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition the commission also considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary due to the emergency order requested to prevent severe economic loss to the applicant.

Contact: Gloria Barrera, P.O. Box 13087, Texas 78711, (512) 463-7898.

Filed: June 13, 1990, 9:55 a.m.

TRD-9006131

Wednesday, July 25, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will discuss application by City of Denton, application number 08-2335A to amend certificate of Adjudication number 08-2335 to also authorize use of the water currently authorized for diversion for hydroelectric purposes at Lake Ray Roberts on the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin in Denton, Cook and Grayson counties.

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

Filed: June 13, 1990, 9:56 a.m.

TRD-9006127

Wednesday, June 27, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 118, Austin. According to the agenda summary, the commission will discuss consideration of various matters within the regulatory jurisdiction of the Texas Water Commission of Texas; consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date; with regard to any item, the commission may take various actions, including but not limited to 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: June 12, 1990, 4:01 p.m.

TRD-9006109

Wednesday, June 27, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North

Congress, Room 118, Austin. According to the agenda summary, the commission will discuss consideration of 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 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, 78711, (512) 463-7898.

Filed: June 12, 1990, 4:02 p.m.

TRD-9006110

Friday, June 29, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 512, Austin. The commission will conduct a hearing on rate increase of West Lea Water Company. Docket Number 8434-G.

Contact: Mary Sahs, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4 p.m.

TRD-9006106

Monday, July 2, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 512, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Highland Shores Utility Company. Docket Number 7963-G.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 3:59 p.m.

TRD-9006105

Tuesday, July 3, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 1028A, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase by Crest Point Water Supply Corporation. Docket Number 8463-G.

Contact: Mary Sahs, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 3:59 p.m.

TRD-9006104

Thursday, July 5, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 119, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Hazy Hill's Water System. Docket Number 8411-G.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 3:58 p.m.

TRD-9006103

Monday, July 9, 1990, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 512, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Holiday Water Services, Inc. Docket Number 8361-R.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4 p.m.

TRD-9006107

Tuesday, July 10, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 512, Austin. According to the agenda summary, the commission will conduct a hearing on application for an amendment to CCN 11144 by Manville Water Supply Corporation. Docket Number 8278-C.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4:03 p.m.

TRD-9006114

Wednesday, July 11, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 214, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of Industrial Utilities Services, Inc. Docket Number 8425-G.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4:02 p.m.

TRD-9006111

Wednesday, July 11, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 118, Austin. According to the agenda summary, the commission will discuss consideration of temporary order for Federated Metals Corporation to authorize intermittent discharge of 200,000 gallons total of concrete culvert washwater commingled with variable amount of stormwater runoff from plant site at 9200 Market Street, south side of Market Street, immediately east of Highway 610 east, City of Houston, Harris County. Discharge will be over a weir to a series of flood control ditches; thence to Turkey Run Ditch; thence to Hunting Bayou; thence to the Houston Ship Channel in Segment 1007 of the San Jacinto River Basin.

Contact: Robert Martinez, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: June 12, 1990, 4:01 p.m.

TRD-9006108

Thursday, July 12, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 1149B, Austin. According

to the agenda summary, the commission will conduct a hearing on rate increase of Resort Country Water Company, Inc. Docket Number 8402-G.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4:03 p.m.

TRD-9006113

Friday, July 13, 1990, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress, Room 512, Austin. According to the agenda summary, the commission will conduct a hearing on rate increase of East Cedar Creek Water System. Docket Number 8401-G.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 12, 1990, 4:02 p.m.

TRD-9006112

Wednesday, September 5, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will discuss the application by Edwin and Patsy Singer, application number 21-3144A, to amend Certificate of Adjudication number 21-3144 to divert water from the reservoir on the Nueces River to irrigate land in McMullen County, approximately 13 miles southeast of Tilden, for irrigation purposes.

Contact: Lann Bookout, P.O. Box 1308 Austin, Texas 78711, (512) 371-6389.

Filed: June 13, 1990, 9:56 a.m.

TRD-9006128

Wednesday, September 5, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will discuss application by the City of Uvalde, application number 5297, to construct and maintain a dam and reservoir on the Leona River, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin for in-place recreational use and to use groundwater pumped into the reservoir to irrigate the park within the city limits of Uvalde, approximately 0.2 miles northeast of the County Courthouse in Uvalde, Uvalde County.

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

Filed: June 13, 1990, 9:56 a.m.

TRD-9006129

Wednesday, September 5, 1990, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will discuss application by Dennis J. Moy, application number 5296,

for an 11.121 water use permit to divert water from the San Antonio River, San Antonio River Basin for irrigation of land, approximately 12 miles northwest of Karnes City, Karnes County.

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

Filed: June 13, 1990, 9:56 a.m.

TRD-9006130

Texas Water Development Board

Wednesday, June 20, 1990, 4 p.m. The Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, Room 513F, 1700 North Congress Avenue, Austin. According to the complete agenda, the committee will consider minutes of the April 18, 1990 meeting; ranking system for regional water, wastewater and flood control planning projects, and items on June 21, 1990 board meeting agenda, board investments and discussion of criteria for selection of consultants for future bond sales.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: June 12, 1990, 2:59 p.m.

TRD-9006089

Wednesday, June 20, 1990, 4 p.m. The Budget Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, Room 513F, 1700 North Congress Avenue, Austin. According to the complete agenda, the committee will be briefed on and consider the preparation and submission of the board's legislative appropriation request (LAR) for the 1992-1993 biennium.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: June 12, 1990, 2:59 p.m.

TRD-9006090

Thursday, June 21, 1990, 9 a.m. The Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress, Room 118, Austin. According to the agenda summary, the board will meet to discuss minutes; development fund manager's report; commitment extensions for Caddo Mills, Emory, San Saba, Millsap WSC, El Paso WC and ID and Hurst Creek MUD; renegotiating San Jacinto River Authority's price to purchase Lake Conroe; financial assistance for Zapata County WC and ID (Hwy 16E), South Texas Water Authority (Driscoll), and City of Wichita Falls; allocating \$150,000 to the Sulphur River Basin Authority; transferring \$30,635 FY 91 research and planning fund for use in FY 90; unsolicited regional water supply plan-

ning grant application from Hickory Underground Water Conservation District; designating economically distressed areas and authorizing solicitation of appropriations for facility engineering studies; approving legislative appropriations request for 1992-1993; executive session to discuss personnel matter regarding special assistant to the executive Administrator.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7981.

Filed: June 13, 1990, 3:47 p.m.

TRD-9006152

Regional Meetings

Meetings Filed June 12, 1990

The Atascosa County Appraisal District Appraisal Review Board met at Fourth and Avenue J, Poteet, June 18-19, 1990, at 8 a.m. Information may be obtained from Vernon A. Warren, Fourth and Avenue J, Poteet, Texas 78026, (512) 742-3591.

The Central Plains Mental Health and Mental Retardation Center Board of Trustees will meet at 308 South Columbia, Plainview, June 21, 1990, at 6:30 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Dallas Area Rapid Transit Board of Directors met at 601 Pacific Avenue, Dallas, June 12, 1990, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, June 21, 1990, at 4 p.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904.

The Education Service Center, Region XIII Board of Directors met at 5701 Springdale Road, Room 205, Austin. Information may be obtained from Dr. Joe Parks, 5701 Springdale Road, Austin 78723, (512) 929-1313.

The Region III Education Service Center Board of Directors met at 1905 Leary Lane, Victoria, June 18, 1990, at 1:30 p.m. Information may be obtained from Dr. Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731.

The Region III Education Service Center Board of Directors met at 1905 Leary Lane, Victoria, June 18, 1990, at 1:30 p.m. Information may be obtained from Dr. Julius Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731.

The Erath County Appraisal District Appraisal Review Board will meet at 1390

Harbin Drive, Board Room, Stephenville, June 19-21, at 1 p.m. Information may be obtained from Trecia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, 8th Floor, Houston, June 20, 1990, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Hays County Appraisal District Appraisal Review Board met at 632A East Hopkins, Municipal Building, San Marcos, June 18, 1990, at 8:30 a.m. Information may be obtained from Lynnell Sedlar, Courthouse Annex, 102 LBJ Drive, San Marcos, Texas 78666.

The Kendall County Appraisal District Appraisal Review Board will meet at 123 West Johns Road, Boerne I.S.D. Board Room, Boerne, June 20-21, and 27, 1990, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lamar County Appraisal District Board will meet at 521 Bonham Street, Paris, June 19, 1990, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham, Paris, Texas 75460, (214) 785-7822.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto County Courthouse, Palo Pinto, June 19, 1990, at 1:30 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto County Courthouse, Palo Pinto, June 20, 1990, at 1:30 p.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto County Courthouse, Palo Pinto, June 21, 1990, at 1:30 p.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

TRD-9006070

Meetings Filed June 13, 1990

The Alamo Area Council of Governments Area Judges will meet at the St. Anthony Hotel, Anacacho Room, San Antonio, June 20, 1990, at 1:15 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205 (512) 225-5201.

The Alamo Area Council of Governments Budget and Workplan Com-

mittee will meet at the St. Anthony Hotel, Anacacho Room, San Antonio, June 20, 1990, at 1:45 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Alamo Area Council of Governments Executive Committee will meet at the St. Anthony Hotel, Anacacho Room, San Antonio, June 20, 1990, 2:30 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Carson County Appraisal District Appraisal Review Board will meet at 102 South Main, Panhandle, June 25, 1990, at 8:30 a.m. Information may be obtained from Dianne Lavake, P.O. Box 90, Panhandle, Texas 79068-0970, (806) 537-3569.

The Central Counties Center For MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, June 19, 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841.

The Education Service Center, Region XVI Board of Directors will meet at the TEAM Bank Building, Amarillo Club, Sunburst Room, Amarillo, June 22, 1990, at 12:45 p.m. Information may be obtained from Dr. Kenneth M. Laycock, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521.

The Fire Department Emergency Funding Board Emergency Funding Board will meet at the Reagan Building, Room 103, Austin. Information may be obtained from Neta Richardson, P.O. Box 13326, Austin, Texas 78711, (512) 441-7388.

The Golden Crescent Service Delivery Area of the Private Industry Council, Inc., will meet at 2401 Houston Highway, Victoria, June 18, 1990, at 7 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 578-0341.

The Golden Crescent Service Delivery Area of the Private Industry Council, Inc., will meet at 2401 Houston Highway, Victoria, June 20, 1990, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 578-0341.

The Guadalup-Blanco River Authority Board of Directors will meet at the Victoria

Bank and Trust Offices, 120 Main Place, Victoria, June 21, 1990, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Heart of Texas Region MHMR Board of Trustees will meet at 110 South 12th Street, Waco, June 19, 1990, at 11:45 a.m. Information may be obtained from Helen Jasso, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451.

The Houston-Galveston Area Council Projects Review Committee will meet at 3555 Timmons Lane, Fourth Floor, Houston, June 19, 1990, at 8:30 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Houston, Texas 77207, (713) 627-3200.

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Fourth Floor, Houston, June 19, 1990, at 10 a.m. Information may be obtained from Marjorie Baker, P.O. Box 22777, Houston, Texas 77227-2777, (713) 627-3200.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, June 27, 1990, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Middle Rio Grande Development Council Private Industry Council will meet at the Del Rio Civic Center, 1915 Avenue F, Del Rio, June 25, 1990, at 1 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Rusk County County Appraisal District Appraisal Review Board will meet at the Administrative Offices, 107 North Van Buren, Henderson, June 19-21, 1990, at 9 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 657-9697.

The San Antonio River Authority Board of Directors will meet at the SARA General Office, 100 East Guenther Street, San Antonio, June 20, 1990, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The South East Texas Regional Planning Commission Executive Committee will

meet at the City of Beaumont Council Chambers, Beaumont, at 7 p.m. Information may be obtained from Jackie Vice, 3800 Highway 365, Port Arthur, Texas, 77642, (409) 727-2384.

The Texas Panhandle Mental Health Authority Board of Trustees will meet at the Killgore Atrium, 1200 Wallace Boulevard, Amarillo, June 21, 1990, at 10:30 a.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79101, (806) 353-7235.

The Trinity River Authority of Texas Administration Committee will meet at 5300 South Collins, Arlington, June 20, 1990, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Trinity River Authority of Texas Utility Services Committee will meet at 5300 South Collins, Arlington, June 19, 1990, at 10 a.m. Information may be obtained from Jack C. Worsham, 76004, (817) 467-4343.

The Trinity River Authority of Texas Legal Committee will meet at 5300 South Collins, Arlington, June 19, 1990, at 1 p.m. Information may be obtained from Jack C. Worsham, 5300 South Collins, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Wise County Appraisal District Appraisal Review Board will meet at 206 South State Street, Decatur, June 19, 1990, at 9 a.m. Information may be obtained from Peggy Price, 206 South State, Decatur, Texas 76234, (817) 627-3081.

The Wise County Appraisal District Appraisal Review Board will meet at the Decatur City Hall, 201 East Walnut, Decatur, June 29, 1990, at 10 a.m. Information may be obtained from Peggy Price, 206 South State, Decatur, Texas 76234, (817) 627-3081.

The Wise County Appraisal District Appraisal Review Board will meet at 206 South State Street, Decatur, July 10, 1990, at 9 a.m. Information may be obtained from Peggy Price, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-9006102

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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.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (3)/Agricultural/ Commercial (4) thru \$250,000</u>	<u>Commercial(4) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	06/18/90-06/24/90	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	06/01/90-06/30/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	07/01/90-09/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	18.00%
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	07/01/90-09/30/90	18.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	07/01/90-09/30/90	15.62%	N.A.
Retail Credit Card Annual Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	18.00%
Annual Rate Applicable to Pre-July 1, 1983 Retail and Lender Credit Card Balances with Annual Implementation Dates from:	07/01/90-09/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	06/01/90-06/30/90	10.00%	10.00%

(1) For variable rate commercial transactions only. (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. (3) Credit for personal, family or household use. (4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on June 11, 1990.

TRD-9006086 Al Endsley
Consumer Credit Commissioner

Filed: June 12, 1990

For further information, please call: (512) 479-1280

Governor's Energy Division Consultant Proposal Requests

This request for professional services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Energy Management Center (EMC) in the Governor's Energy Division invites proposals from qualified agencies, institutions of higher education, associations, firms, and individuals to provide:

energy audits for buildings owned by the state and institutions of higher education, local governments, independent school districts and others; and the design review for energy efficiency in new state buildings. Respondents may submit proposals for either one or both of the two services. Proposers desiring to submit on both services should prepare separate proposals for each. The proposers selected will be hired to perform these services on an as-needed basis. Energy audits performed under this program will follow the Texas LoanSTAR Audit Guidelines issued by the Governor's Office or the Federal Institutional Conservation Program (ICP) format and will identify retrofit projects for possible funding through the state's loan program—LoanSTAR.

Services to be Performed. Contractor(s) selected will perform the following energy audit services as assigned: participate in a one-day audit procedures meeting conducted by EMC to ensure compliance with the audit

guidelines; contact assigned institutions to schedule on-site audits and review energy consumption and building data provided by the institutions; perform walk-through energy audits of assigned buildings to identify potential improvements in current energy operation and maintenance practices, and to identify building systems or projects where detailed engineering analysis should be performed; conduct detailed engineering energy audits of assigned buildings; review previously identified energy conservation opportunities to determine if the evaluations are still valid given changes in technology, original assumptions or economic factors. If appropriate, update the evaluation to conform to the current factors; prepare written energy audit reports, following EMC audit guidelines that, at a minimum, will: describe the major building HVAC and lighting equipment, existing metering equipment, and energy use characteristics; describe and analyze all viable recommendations for energy cost reduction measures with a total composite payback of four years or less; detail recommendations for maintenance and operation improvements, including paybacks; analyze utility rate schedules for possible billing errors and optimum rate schedule; and give a brief description, for future analysis, of potential cost-saving measures with paybacks significantly greater than four years and less than 10 years; provide five copies of the energy audit report to the EMC's management firm for technical review and approval; provide six copies of the final report, as approved by EMC, for distribution to the management firm, program administrators, and institutional recipients; review final reports for accuracy and adherence with sound engineering practices by a professional engineer registered in the State of Texas; cooperate with the EMC and its technical review contractor(s) during the technical review to assure that the technical quality of the audit reports meets the program requirements and complies with generally accepted engineering practices and the EMC approved format.

Contractor(s) selected will perform the following design review services as assigned: provide building energy design analysis, recommendations, and technical assistance to selected agencies and/or institutions of higher education for cost-efficient design and construction of new state facilities; participate in design review meetings with the architectural/engineering (A/E) teams as requested by the EMC; review construction documents to determine energy and cost impact of facility design improvements that could be made; file written recommendations with the state agencies, institutions of higher education, their A/E teams, and the EMC as soon as each review is complete; prepare a final report summarizing energy and cost savings achieved by this program for each design project; prepare special energy related engineering analyses as requested by the EMC in a format to be determined based upon project scope.

Contact Person. To obtain more detailed information concerning this project, contact Andrew Saleh, Energy Audit Coordinator, or Lee Gros, Design Review Coordinator, Energy Management Center, Governor's Energy Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931. The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701.

Closing Date. Six copies of the sealed proposals should be sent to Kim Munyon, Energy Management Center, Governor's Energy Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931. The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail, courier, or hand delivered, and must be received no later than 3

p.m. on July 30, 1990. Proposals received after that time and proposals submitted by facsimile will not be considered.

Selection Criteria. The contractor(s) selected to perform energy audit services must demonstrate a comprehensive knowledge of energy using systems in institutional and government buildings, energy management technologies, energy savings calculation methodologies, and ICP and Texas LoanSTAR Audit guidelines. Proposals should be short, concise, clearly written, and must specifically cover the ability to provide consulting services requested. Proposals should address the following selection criteria in the following order: demonstrated in-depth knowledge of energy conservation technologies, energy audits, ICP and Texas LoanSTAR Audit guidelines, and building operation and maintenance practices; previous work experience related to state, federal, and commercial building energy audit programs, of the project manager, audit team leaders, and staff engineers to be assigned this work; firm's demonstrated ability to assign sufficient staff and resources needed to perform work assigned as a result of this consultant proposal request and the firm's projected work load on other projects during the period of September 1990-August 1991; list of all individuals proposed to work on this project according to the following classifications: project manager; senior engineer/audit team leader (must be registered professional engineer unless qualification waived by EMC); staff engineer; engineers-in-training/technicians; administrative staff.

The contractor(s) selected to perform design review for energy efficiency of new state construction must demonstrate comprehensive knowledge of energy using systems in buildings and cost-effective energy design practices.

Proposals to conduct design review for energy efficiency of new state construction should address the following selection criteria in the following order: qualifications and experience of the organization and of the specific staff assigned to this project; previous work experience relative to this type of project; demonstrated ability to review architectural and engineering design drawings for the purpose of identifying energy conservation opportunities; familiarity with the Texas energy conservation design standard for new state buildings or related standards; availability of a registered professional engineer and/or architect licensed in Texas to supervise and sign off on all recommended energy efficiency design improvements; ability to provide adequate staffing to complete multiple analyses and recommendations in a short time frame when requested.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the preceding criteria. The Governor's Office reserves the right to negotiate both budget and scope of work with the finalist. The Governor's Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals.

Final selection of the contractor(s) will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be made, the review committee may request finalists to provide additional information or to meet with EMC staff in Austin prior to final selection of the contractor(s). No respondent will be reimbursed for any cost incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on June 11, 1990.

Filed: June 12, 1990

For further information, please call: (512) 463-1931

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This request for professional services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Governor's Energy Management Center (GEMC) invites proposals from qualified agencies, institutions of higher education, associations, firms, and individuals to provide training and technical assistance, to local governments in developing waste-to-energy alternatives to current solid waste disposal methods.

Services to be Performed. The contractor or contractors will be selected to perform the following services.

(1) Develop and print 500 copies of "Guide for Implementation of Waste-to-Energy Technologies." The guide will include, but not be limited to, the following topics: (a) case studies of successful waste-to-energy projects; (b) commercially available technologies for the conversion of solid waste to economically usable forms of energy; (c) practical applications for using the energy produced from waste; (d) components necessary for a successful waste-to-energy project; (e) meeting state and federal regulatory permit requirements; (f) funding mechanisms currently available to local governments for the application of waste-to-energy technologies; (g) ranges for capital costs, operational expenses, savings from replacement of current disposal operations, potential revenues, and other factors which define the economic pay-back of the applications of waste-to-energy technologies; (h) recycling as a component of an effective waste-to-energy program; and (i) characterization of typical municipal solid waste.

(2) Conduct 12 technology transfer seminars for local government officials to inform them of available applications of waste-to-energy technologies. The text and outline for the seminars will be the "Guide for Implementation of Waste-to Energy Technologies."

The contractor will also be expected to perform the following services in support of the workshops: develop all seminar training material; develop and distribute all seminar promotional and registration material; arrange meeting rooms for all seminars; coordinate all activities with various state agencies; and perform other duties, as necessary, connected with successful workshop presentation.

(3) As a follow-up to the workshops, the contractor selected will respond to telephone questions from seminar attendees for clarification or additional information concerning technologies presented at the workshops.

(4) The contractor will provide on-site and telephone technical assistance to local governments in the development of waste-to-energy plans and feasibility study applications. (Note: the contractor selected as a result of this Consultant Proposal Request will not be eligible to conduct feasibility studies under future GEMC waste-to-energy contracts). Technical assistance will be provided in, but not be limited to, the following areas: determining the volume of waste generated; identifying markets for generated energy; securing local support for the projects; identifying environmental considerations and constraints; presenting funding mechanisms available to local government; and providing other support necessary for

successful waste-to-energy projects.

(5) The contractor will provide program management assistance to GEMC by: developing an application and application instructions for local governments to use in submitting requests for feasibility studies funded by GEMC; developing criteria for evaluating feasibility study requests; assisting GEMC with the evaluation of requests for feasibility studies; assigning selected contractors to perform feasibility studies; and performing other duties as assigned by GEMC.

(6) The contractor will prepare a final report of the results of the program as directed by GEMC.

Contact Person. To obtain more detailed information concerning this project, contact Ernie Moore, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Closing Date. Six copies of the proposals should be sent to: Kim Munyon, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711.

The Governor's Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail or by courier and must be received no later than 3 p.m. on July 30, 1990. Proposals received after that time and proposals submitted by facsimile mail will not be considered.

Selection Criteria. Proposals should be short, concise, clearly written, and should describe the proposer's capabilities and resources for delivering the requested services. Proposals to deliver the requested services will be evaluated according to the following criteria: proposer's knowledge of and experience in the design, permitting, construction, and operation of waste-to-energy facilities; proposer's experience in organizing, promoting, and conducting workshops for local government officials; proposer's ability to assign staff with excellent written, verbal, and graphic skills (a sample of materials developed by the staff assigned to this project may be required); qualifications of personnel to be assigned to the project; and reasonableness of the proposed budget in relation to the services performed.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the preceding criteria. The Governor's Office reserves the right to negotiate both budget and scope of work with the finalist. The Governor's Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals.

Final selection of the contractor will be based on the recommendations of a review panel. If two or more proposals are ranked so closely that a decision cannot be made, the review panel may request finalists to provide additional information or meet with GEMC staff in Austin prior to final selection of the contractor. No respondent will be reimbursed for any cost incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on June 11, 1990.

TRD-9006093 Auburn L. Mitchell
Director
Energy Division

Filed: June 12, 1990

For further information, please call: (512) 463-1931

This request for professional services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Governor's Energy Management Center (EMC) invites proposals from qualified agencies, institutions of higher education, associations, firms, and individuals to provide energy management training, technical assistance, and comprehensive energy audits to small hospitals (200 beds or less) in Texas.

Services to be performed. The contractor selected will perform the following services: provide program management under the direction of EMC; publicize and promote the program services to the target audience; reprint and distribute as necessary the "Guide for Energy Management in Small Hospitals;" conduct technical assistance energy audits as requested by the 30 hospitals which received preliminary energy audits and energy audits in the fiscal year 1990 Small Hospitals Program. The audits will follow the Institutional Conservation Program (ICP) technical assistance audit format; provide assistance to small hospitals in the completion of their ICP application for retrofit funding; provide energy management training for hospital administrators and engineers; provide on-site technical assistance and training for small hospital personnel in energy management procedures as requested by small hospitals and EMC; conduct preliminary energy audits as requested by small hospitals and EMC using the (ICP) format; provide other energy management services to small hospitals as requested or approved by EMC; and provide a final report of program results as directed by EMC.

Contact Person. For more information concerning this project, contact Ernie Moore, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931. The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701.

Closing Date. Six copies of the proposals should be sent to Kim Munyon, Energy Management Center, Energy Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1931. Proposals should be sent by certified mail or by courier and must be received no later than 3 p.m. on July 23, 1990. Proposals received after that time will not be considered and no proposals will be accepted by facsimile mail.

Selection Criteria. Proposals should be short, concise, clearly written, and should describe the proposers' capabilities and resources for delivering the requested services. Proposals to deliver the requested services will be evaluated according to the following criteria: proposers' demonstrated experience in energy program management; proposers' demonstrated experience in and qualifications for conducting ICP audits and technical proposers' demonstrated experience in providing training and technical assistance to small hospital personnel; qualifications, abilities, and experience of specific staff assigned to this project; reasonableness of the proposed budget in relation to the services performed.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposers' abilities to satisfy the preceding criteria. The Governor's Office reserves the right to negotiate both budget and scope of work with the finalist. The Governor's Office reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the

basis of this consultant proposal request.

Final selection of the contractor will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be made, the review committee may request finalists to provide additional information or meet with EMC staff in Austin prior to final selection of the contractor. No respondent will be reimbursed for any cost incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on June 11, 1990.

TRD-9006091 Auburn L. Mitchell
Director
Energy Division

Filed: June 12, 1990

For further information, please call: (512) 463-1931

Request for Proposals

Notice of Invitation. The Governor's Energy Management Center (GEMC) invites proposals from qualified social service agencies, community groups, utilities, and local governments to implement programs to promote the efficient use of energy in low-to-moderate income housing. A dollar-for-dollar match is required for projects funded through this program, which is funded through the Housing Partnership Program created by the 71st Texas Legislature.

Programs or projects may include the following: training and technical assistance for residents of low-to-moderate income housing; training and technical assistance for persons responsible for the construction, operation or maintenance of housing for low-to-moderate income persons; financing incentives, such as interest buydown programs, for energy-efficient new construction or renovation projects; and capital expenditures (i.e., equipment and materials), project design costs, labor costs, and other direct program implementation costs for demonstration projects, if such costs are consistent with guidelines established by the United States Department of Energy (DOE). These guidelines will be included in the application packet. For projects that do not meet DOE demonstration guidelines, budgets must be structured so that capital expenditures are paid by matching funds.

Restrictions on the use of funds. This program is funded with oil overcharge funds allocated to the Housing Partnership Program (HPP) by the 71st Texas Legislature. Oil overcharge funds are monetary settlements returned to the states as a result of litigation by the United States Department of Energy (DOE) against certain oil companies for alleged violations of price controls in effect between 1973 and 1981. The courts returned these funds to the states for use in certain energy programs deemed to provide restitution to citizens aggrieved by the overcharges.

Funds are subject to program guidelines of the DOE state energy conservation plan (SECP) and the U.S. v. Exxon court decision and may not be used to pay indirect or administrative costs. The funds may be used to supplement existing programs, but may not supplant funds already allocated to the programs.

Projects selected will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and under federal guidelines, and all are subject to approval by the governor's office. No advance payments are allowable.

The following additional restrictions apply: for

demonstration projects, the technologies involved must be commercially available and cost-effective within four years of installation; funding is not available for the purchase of land; funding is not available for the construction of new buildings. However, funding may be used for energy efficient features of a new building, if such features meet the DOE demonstration guidelines; no more than 50% of the required match may be in in-kind services; the maximum grant will be \$500,000.

Contact person. To obtain a copy of the proposal format, or for more information, contact Douglas Key, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1870. Proposal formats will be sent via regular mail, not by express mail or by fax machine.

Closing date. Six copies of the proposal should be sent to: Kim Munyon, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711.

The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail or by courier and must be received no later than 3 p.m. on August 31, 1990. Proposals received after that time will not be considered; no extensions will be granted. Proposals may not be submitted by fax machine.

Selection Criteria. Proposals must adhere to the format provided by the Energy Management Center. Proposals will be evaluated using the following criteria: the proposer's experience in administering programs which deliver housing services to low-to-moderate income persons (10%); the proposer's experience administering energy efficiency programs and/or the proposer's existing energy management policies and practices (10%); the potential energy savings from the program or project (20%); the degree to which the program or project is likely to be replicated by other organizations that provide housing to low-to-moderate income persons and the mechanisms that will be used to share information about the program or project with other organizations that provide housing services to low-to-moderate income persons (15%); the degree to which the low-to-moderate income residents themselves are involved in the program or project and the extent to which they are likely to become better managers of their energy budgets (15%); the level of community support for the program or project, as evidenced by contributions of cash or in-kind services toward the required match (10%); the plan for evaluating the effectiveness of the program or project, including verification of projected energy savings (10%); and the reasonableness of the proposed budget, including the claimed value of any proposed in-kind services (10%).

Final selection of contractors will be based on the recommendations of a proposal review panel. The EMC reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals. The review panel may request finalists to provide additional information or to meet with Energy Management Center staff in Austin prior to final selection. No respondent, however, will be reimbursed for any costs incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on June 11, 1990.

TRD-9006116 Auburn L. Mitchell
Director
Energy Division

Filed: June 13, 1990

For further information, please call: (512) 463-1931

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Texas Department of Highways and Public Transportation

Consultant Proposal Request

As required by Texas Civil Statutes, Article 6252-11c, the following notice for request for proposals is filed.

Notice of Invitation. The State Department of Highways and Public Transportation intends to engage a private consultant to develop a comprehensive department-wide Information Security Program. This program will enhance the department's ability to protect the integrity and confidentiality of data processed by its automated administrative and engineering systems.

Agency Contact. Additional information regarding this consultant proposal request may be obtained by contacting Scott Burford, Contract Manager, Division of Automation, 11th and Brazos Streets, Austin, Texas 78701-2483, (512) 465-7540.

Response Date. To be considered, sealed proposals must arrive at the Division of Automation, 11th and Brazos Streets, Austin, Texas 78701-2483 on or before July 30, 1990. Proposals received after 4:50 p.m. on July 30, 1990, will not be considered.

Selection Criteria. Proposals will be evaluated by a selection committee on the basis of offeror's demonstrated competence, technical qualifications, fee, and project plan. Award will be based on evaluation criteria that include, but are not limited to, the offeror's cost, ability to staff and perform, reputation with previous customers, experience and successes on other projects, and submitted project plan. Final selection will be made by the department's administration based on recommendations from the selection committee and the automation engineer of the Division of Automation.

Issued in Austin, Texas, on June 12, 1990.

TRD-9006065 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public
Transportation

Filed: June 12, 1990

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

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Texas Department of Human Services

Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is inviting proposals for consultant services.

Description of Services: After the review of response time in the statewide network, a design and development project is needed to determine future directions for the local area network (LAN) applications in the statewide network.

Contact Person: To obtain a complete copy of the request for proposal packet, please contact Sue Sullivan, Texas Department of Human Services, P.O. Box 149030, MC 451-C, Austin, Texas 78714-9030, (512) 450-4273.

Term of Contract: The contract period will be from July 16, 1990-October 15, 1990 for review of the current application environment, design for the delivery of information systems services to the field offices, and development of a detailed plan to implement this design.

An optional additional phase of active participation in the management of the revisions may also be pursued.

Closing Date: The last date offers will be received is July 10, 1990.

Evaluation and Selection: Evaluation criteria will include proven project management and leadership skills; proven analytical skill and design capabilities; knowledge of TDHS, its personnel, applications, and resources; quality of proposed approach; and cost.

Issued in Austin, Texas, on June 13, 1990.

TRD-9006115 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: June 13, 1990

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

Texas State Library and Archives Commission

Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, Chapter 441, Subchapter J, for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted through June 29, 1990, to fill the vacated position for the office of chief of police from a municipality with a population of 50,000 or more, the term of which will expire February 1, 1991.

A nomination may be made by an organization representing officers of the type to be appointed that has as members at least 50 of those officers. In choosing between two or more nominees, the director and librarian will give preference to a nomination or nominations received from organizations whose membership consists primarily of the type of officer to be nominated.

Nominations should be sent to William D. Gooch, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Issued in Austin, Texas, on June 8, 1990.

TRD-9006073 Raymond Hitt
Assistant State Librarian
Texas State Library

Filed: June 12, 1990

For further information, please call: (512) 463-5440

Texas State Technical Institute Consultant Proposal Request-Amendment

The following sentence, third paragraph as published in the May 18, 1990, issue of the *Texas Register* (15 TexReg 2830) shall be amended to read: "It is anticipated that the contract for services will begin approximately July 1, 1990, and end September 30, 1990.

Issued in Waco, Texas, on June 6, 1990.

TRD-9006044 Dr. J. D. Pierson
Associate Dean, Economic Development
and Industrial Training
Texas State Technical Institute-Waco

Filed: June 11, 1990

For further information, please call: (817) 867-4844

Texas Water Commission Advertisement for Bid

The Texas Water Commission (TWC) wishes to retain the services of a contractor to analyze waste minimization data and prepare waste minimization projections for the Texas capacity assurance plan (CAP). This project will be conducted by the TWC pursuant to the Comprehensive Environmental Response Compensation and Liability Act, Section 104(c)(9).

Objectives. The objectives of the waste minimization data analysis study are to: assess waste minimization trends of large quantity Texas hazardous waste generators from 1987 to 1989; determine industry's projections of the effects of their waste minimization activities on future waste stream volumes; develop waste minimization factors to be used in the next Texas CAP.

The project shall be accomplished in three tasks. The first task includes an analysis of waste minimization data received from 200 large volume hazardous waste generators for 1987 to 1989. The second task involves a survey of approximately 200 large volume hazardous waste generators and development of projections based on the survey results. The third task will be integration of the historical data and the generators' numerical projections in order to develop waste minimization factors for use in the next Texas CAP.

Qualifications. A qualified bidder will have two out of the three qualifications listed as follows: experience analyzing EPA Biennial Report waste minimization data; experience with capacity assurance planning methodologies or surveys of industries to obtain environmental data; experience with waste minimization and production processes in the following industries: petroleum refining and chemical manufacturing. Knowledge of these activities in three other industries (transportation equipment, primary metals, and electronics) is also desirable.

Budget and schedule. This project will be partially funded with \$50,000 received from a United States Environmental Protection Agency grant. All work on the project must be complete by January 30, 1991.

Submittal information. A copy of the invitation for bid (IFB) package may be obtained in three ways: by sending a regular or certified letter requesting a copy of the IFB package to: Waste Minimization Unit, Hazardous and Solid Waste Division, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087, Attention: Waste Minimization Analysis Bid Package. On receipt, the TWC will transmit the IFB package to the potential bidder by certified mail; by sending an overnight or expedited delivery letter requesting a copy of the IFB package to the address previously listed with a prepaid, self-addressed, overnight or expedited delivery return envelope sufficiently large to accommodate 8 1/2 inch-by 11-inch materials, 1/2 inch thick; or by appearing in person with a signed letter of receipt at Room 242, Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

The IFB package may be examined between 8 a.m. and 5 p.m. in Central Records, Room 542, Stephen F. Austin Building.

Five copies of the bid and all attachments must be submitted to the attention of Kathy Ferland at either of the addresses previously listed before 5 p.m., July 10, 1990, which is the closing date for receipt of bids.

Additional instructions on submission of a bid are contained in the IFB package. All statements submitted in response to this request must address the items as described in the IFB. Information submitted by a bidder in variance with the IFB instructions will not be reviewed or evaluated. All procurement, contracting procedures, and any resulting contract shall be subject to all applicable state and federal laws and regulations, including 40 Code of Federal Regulations, Part 31. Additional information may be obtained by calling Kathy Ferland, Project Manager, at (512) 463-7761.

No bid may be withdrawn after the scheduled closing time for receipt of bids for at least 60 calendar days. In case of ambiguity or lack of clarity stating the price in the bids, the TWC reserves the right to consider the most advantageous construction thereof, or to reject the bid. Any contract awarded under this IFB is expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is a party to this IFB of will be a party to any resulting contract.

Upon submittal, the bids shall become the property of the State of Texas. The contents of the bid shall be considered as part of the public record unless otherwise identified by the bidder. The submittal of confidential or proprietary information should be under separate cover on or before the due date. Confidential submittals should be limited and must include an explanation of the basis for confidentiality. TWC reserves the right to reject or return confidential information, and to reject the designation of such information as confidential should it be disclosable in response to a request under the Open Records Act.

By signing its bid, the bidder affirms that he has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid. Failure to sign the bid or signing it with a false statement, shall void the submitted bid or any resulting contracts, and the bidder shall be removed from all bid lists (1 TAC §113.5(o)) .

Equal opportunity in employment. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or natural origin. Bidders on this work will be required to comply with the President's Executive Order Number 11246, as amended.

Issued in Austin, Texas, on June 13, 1990.

TRD-9006119 James F. Haley
Director, Legal Division
Texas Water Commission

Filed: June 13, 1990

For further information, please call: (512) 463-7761

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**Notice of Application For Waste
Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of June 4, 1990-June 8, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the

application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

City of Amarillo; River Road Wastewater Treatment Plant; approximately 10 miles north-northeast of the intersection of Interstate Highway 40 and U.S. Highway 87, approximately 1.5 miles east of U. S. Highway 87, Potter County; 10392-01; renewal

City of Childress; wastewater treatment facility; approximately 1/2 mile south of U.S. Highway 287 and approximately one mile east of FM Road 2530 in Childress County; 10076-02; renewal

City of Crawford; wastewater treatment facility southeast of Crawford, about 1/2 mile east of State Highway 317 and 1/4 mile south of FM Road 185, McLennan County; 10656-01; renewal

Cypress Bayou, Inc.; Orange; Little Cypress Bayou Estates Wastewater Treatment Facility; north of Orange, at a point approximately 1,200 feet east and 1,600 feet north of the intersection of State Highway 87 and FM Road 1130, Orange County; 12109-01; renewal

Joe Crouch; Crowley; a dairy; south of FM Road 934 at a point 1.24 miles east of Interstate Highway 34W and two miles east of the City of Itasca, Hill County; 03228; new

Hoechst Celanese Chemical Group, Inc.; chemical manufacturing plant; approximately 10 miles southwest of Bay City, Matagorda County; WDW-277; new

City of Iowa Park; wastewater treatment facility; southwest of the City of Iowa Park, approximately 0.25 mile west of FM Road 368 and one mile north of FM Road 367, Wichita County; 10691-02; renewal

Jackson County Water Control and Improvement District Number 1; Lolita; Lolita Wastewater Treatment Facility; east end of Elm Street and approximately 3,000 feet southwest of the intersection of FM Road 616 and FM Road 1593 in the eastern section of Lolita, Jackson County; 10911-01; renewal

City of League City; Baybridge Wastewater Treatment Facility; on Gum Bayou, 3/4 mile south of FM Road 1266 and west of State Highway 146 in the City of League City, Galveston County; 10568-07; renewal

City of Milford; wastewater treatment facility; on Water Street, immediately west of the M.K.T. Railroad crossing over Mill Creek, approximately 1/2 mile south of the intersection of FM Road 308 and U.S. Highway 77, Ellis County; 10730-01; renewal

City of Needville; wastewater treatment facility; 14206 Church Street, south of Buffalo Creek and south of Needville, approximately 0.8 mile south and 0.4 mile east of the intersection of State Highway 36 and FM Road 1236, Fort Bend County; 10343-01; renewal

Don Oppliger; Farwell; a cattle feedlot; south side of FM Road 1760, approximately 15 miles west of the intersection of FM Road 1760 and Highway 84, Bailey County; 03214; new

Steve Vandermeer; Hico; a dairy; on a county road, approximately 11 miles southeast of downtown Stephenville, and approximately one mile west of FM Road 2481, Erath County; 03190; new

Gerard Vankooten; Comanche; a dairy; approximately seven miles west of Comanche on FM Road 1689, Comanche County; 03179; new

Gary Viss; Comanche; a dairy; approximately 4,500 feet southeast of the intersection of U.S. Highway 67 and FM Road 2481, Erath County; 03210; new

Issued in Austin, Texas, on June 11, 1990

TRD-9006059 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: June 11, 1990

For further information, please call: (512) 463-7906



Request for Qualification

The Texas Water Commission (TWC) announces that it wishes to retain the services of an analytical laboratory to perform rapid turnaround (48-hour) and 20-day turnaround chemical analyses for hazard assessment, waste characterization, and composition for emergency response to oil and hazard assessment incidents, and for leaking petroleum storage tank (LPST) sites and known or suspected RCRA or industrial waste facilities.

The project will be conducted by the TWC, in part through cooperative agreement with the United States Environmental Protection Agency (EPA) and is pursuant to the Superfund Amendments and Reauthorization Act (SARA) of 1986, the Resource Conservation and Recovery Act (RCRA), the Hazardous and Solid Waste Amendments (HSWA), and the Texas Water Code, Chapter 26, Subchapters G and I, and the Texas Solid Waste Disposal Act.

Objectives. The objective of obtaining analytical laboratory services is to secure reliable laboratory results with a rapid turnaround time (48-hour) and/or a 20-day turnaround time in order to facilitate emergency services

for oil and hazardous material, emergency response incidents and LPST sites, and known or suspected RCRA or industrial waste facilities.

The contractor will be responsible for all services and equipment necessary to complete the project.

RFQ Procurement. Contractors interested in submitting qualifications for this project must obtain a request for qualifications (RFQ) from the TWC. A copy of the RFQ may be obtained in one of two ways: by certified mail or private express mail service with a prepaid, self-addressed envelope to Danny Lien, P.E., PST Division, Storage Tank Contracts Section, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 371-6200; or in person at Room 207, 8900 Shoal Creek Boulevard, Austin.

Procedure for Selecting Contractor. A detailed evaluation process will be conducted, using criteria such as, but not limited to, demonstrated technical expertise; available facilities and equipment; related experience, and availability of trained, competent personnel to be assigned to the project; and the contractor's chain-of-custody and quality assurance/quality control plans.

All contractors meeting the TWC's minimum qualifications will be sent an invitation for bid (IFB). All bids submitted by the bid opening deadline will be opened and analyzed according to the criteria stated in the IFB. A contract will be awarded, subject to commission approval, to the lowest responsive, responsible bidder.

Submittal Information. Four copies of the qualification must be received at the following addresses before 4 p.m. local prevailing time on July 10, 1990: by mail: Danny Lien, P.E., Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087; in person: Danny Lien, P.E. Texas Water Commission, Room 207, 8900 Shoal Creek Boulevard, Austin, Texas 78758.

Information submitted by a contractor in variance with the RFQ instructions will not be evaluated. All contracting procedures shall be conducted in accordance with all applicable state and federal rules.

Issued in Austin, Texas, on June 13, 1990.

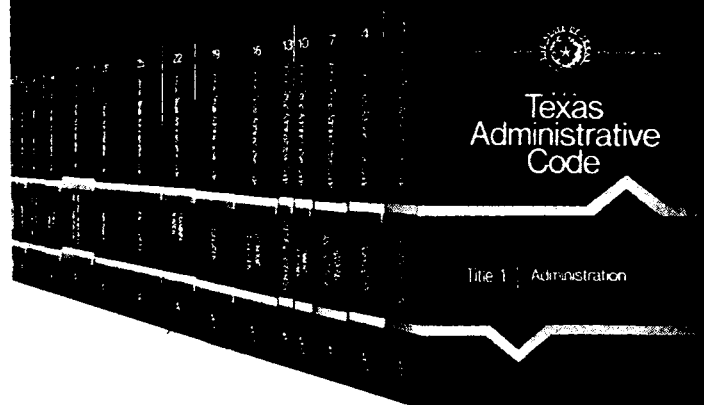
TRD-9006118 James F. Haley
Director, Legal Division
Texas Water Commission

Filed: June 13, 1990

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



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