

APR 07 89

Texas Register

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Texas Register

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3."

How To Research: The public is invited to research rules and information; of interest between 8 a. m. and 5 p. m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

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Name: Phoumine Bounheuangvilay
Grade: 8
School: Haltom Jr. High, Birdville

TAC Titles Affected

TAC Titles Affected—April

The following is a list of the administrative rules that have been published this month.

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7 TAC §81.20—1683

TITLE 16. ECONOMIC REGULATION

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16 TAC §5.294—1679

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19 TAC §§61.145—1707

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22 TAC §217.11—1708

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28 TAC §1.407—1743

28 TAC §§3.1-3.5—1709

28 TAC §§3.1-3.9—1709

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28 TAC §5.9203—1748

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28 TAC §21.702—1722

28 TAC §25.713—1723

28 TAC §§27.801-27.809—1679

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31 TAC §297.1—1724

31 TAC §297.45—1724

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31 TAC §375.62, §375.63—1756

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31 TAC §§375.81-375.84, 375.86, 375.88—1757

31 TAC §375.102, §375.103—1758

31 TAC §375.111—1758

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34 TAC §3.329—1736

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Part VII. Texas Commission on Law Enforcement Officer Standards and Education

37 TAC §211.67—1741, 1737

37 TAC §§211.68, §211.85—1738

TITLE 40. SOCIAL SERVICE AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §§48.2925-48.2927—1681

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40 TAC §115.5—1739

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

43 TAC §§21.31, 21.32, 21.35, 21.37-21.40, 21.42-21.46, 21.48-21.51, 21.53, 21.54—1705

43 TAC §21.33—1705

43 TAC §21.33, §21.41—1706



The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Executive Order

WPC 89-5

WHEREAS, the Texas Department of Corrections has notified the Texas Attorney General in writing that the inmate population of the Texas Department of Corrections has reached 95% of capacity, as defined by statute and as imposed by the agreed order in *Rulz v. McCotter*; and

WHEREAS, the Attorney General has certified, in writing, that the inmate population has reached 95% of the capacity, as defined above, of the Texas Department of Corrections; and

WHEREAS, the Board of Pardons and Paroles has recommended, in writing, an award of 30 days of administrative good conduct time to alleviate the overcrowded condition of the Texas Department of Corrections; and

WHEREAS, by S.B. 215, 70th Legislature, Regular Session, amending the Texas Prison Management Act, Article 6184o, Texas Revised Civil Statutes, the Legislature has required that under these circumstances the Governor shall immediately certify that an emergency overcrowding situation exists and shall order the director of the Texas Department of Corrections to credit administrative good conduct time to all eligible inmates.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby order the Director of the Texas Department of Corrections to credit to all eligible inmates, as defined by S.B. 215, 30 total days of administrative good conduct time.

This Executive Order shall be effective immediately and shall apply to all inmates in the Texas Department of Corrections population as of the midnight population count on Friday, March 24, 1989, and shall be binding as authorized by law. This Executive Order may be modified or amended from time to time, as required to carry out the intent of the Legislature, until the emergency overcrowding condition no longer exists.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on January 9, 1988.

TRD-8902954

William P. Clements, Jr.
Governor of Texas



Name: Greg Jackson

Grade: 11

School: Plano High, Plano

Appointments Made March 28, 1989.

To be a member of the **East Texas State University Board of Regents** for a term to expire February 15, 1995: William Mahomes, Jr. 909 Liberty Street, Dallas, Texas 75204. Mr. Mahomes will be replacing James L. Toler of Garland, whose term expired.

To be a member of the **Texas Commission for the Blind** for a term to expire February 1, 1995: Ann Masterson, 42 Patti Lynn, Houston, Texas 77024. Mrs. Masterson is being reappointed.

To be a member of the **Brazos River Authority Board of Directors** for a term to expire February 1, 1995: Jesse Lee Hibbets, Jr., 112 Oyster Bend Lane, Lake Jackson, Texas 77566. Mr. Hibbets will be replacing Douglas A. Strain of West Columbia whose term expired.

To be a member of the **Board of Tax Professional Examiners** for a term to expire March 1, 1995: Phyllis J. Colon, 1301 Aswan Drive, Corpus Christi, Texas 78418. Mrs. Colon will be replacing Ezequiel P. Laurel of Laredo, whose term expired.

Pursuant to the Texas Government Code, §26.012, the Honorable Jerome P. Owens, Jr., County Judge, Tyler County, has certified his disqualification to act as County Judge in the following cases pending in the Tyler County Court: Cause Number 6070, guardianship of Margery Maers Marble, in the County Court of Tyler County; Cause Number 5288, guardianship of Louise Nichols Owens N.C.M., in the County Court of Tyler County; Cause Number 6212 estate of Glen Elbert Miles, deceased, in the County Court of Tyler County; Cause Number 5767, estate of Jimmy D. Brown, deceased, in the County Court of Tyler County.

Judge Owens has requested the appointment of a Special Judge to hear this matter.

I do hereby appoint James M. Allison of Tyler County, to act as Special County Judge in the above-numbered cases, and respectfully request that you issue a commission to Mr. Allison for that purpose.

Appointments Made March 29, 1989.

To be a member of the **State Board of Insurance** for a term to expire January 31, 1995: Thomas B. McDade, 5276 Cedar Creek, Houston, Texas 77056. Mr. McDade will be replacing James L. Nelson of Austin, whose term expired.

To be a member of the **State Board of Insurance** for a term to expire January 31, 1993: Richard F. Reynolds, 3011 Sagebrush, Flower Mound, Texas 75028. Mr. Reynolds will be filling the unexpired term to Edwin J. (Jack) Smith, Jr. of Dallas, who resigned.

To be a member of the **State Highway and Public Transportation Commission** for a term to expire February 15, 1995: Wayne B. Duddleston, 3005 Del Monte, Houston, Texas 77019. Mr. Duddleston will be replacing John R. Butler, Jr. of Houston, whose term expired.

To be a chairman of the **Texas Board of Health** for a term to expire in two years: Dr. Frank Bryant of San Antonio. Dr. Bryant is being reappointed.

To be Vice Chairman of the **Texas Juvenile Probation Commission** for a term to expire in two years: Mary M. Burk of San Angelo. Ms. Burk will be replacing Antonio O. Garza, Jr., of Brownsville, who resigned.

To be Vice Chairman of the **Texas Board of Health**, for a term to expire in two years: Dr. Raleigh White of Temple. Dr. White is being reappointed.

Issued in Austin, Texas on March 29, 1989.

TRD-8902809

William P. Clements, Jr.
Governor of Texas



Appointments Made March 30, 1989.

To be a member of the **Texas Board of Irrigators** for a term to expire January 31, 1995: J. Carl Causey, S.S. Route, Box 2, Weatherford, Texas 76086. Mr. Causey will be replacing Herman Johnson of Corpus Christi, whose term expired.

To be a member of the **Texas State Board of Public Accountancy** for a term to expire January 31, 1995: William R. Cox, 13623 Tosca, Houston, Texas 77079. Mr. Cox will be replacing Walter D. Davis of Houston, whose term expired.

To be a member of the **Board of Regents of Texas Woman's University** for a term to expire February 1, 1995: Jeanne L. Johnson, 6211 West Northwest Highway G815, Dallas, Texas 75225. Ms. Johnson will be replacing Roland Boyd of McKinney, whose term expired.

To be a member of the **Texas State Board of Examiners of Psychologists** for a term to expire October 31, 1991: Lisa Saemann, 6619 East Mockingbird, Dallas, Texas 75214. Ms. Saemann will be filling the unexpired term of Ann Crews of Dallas, who resigned.

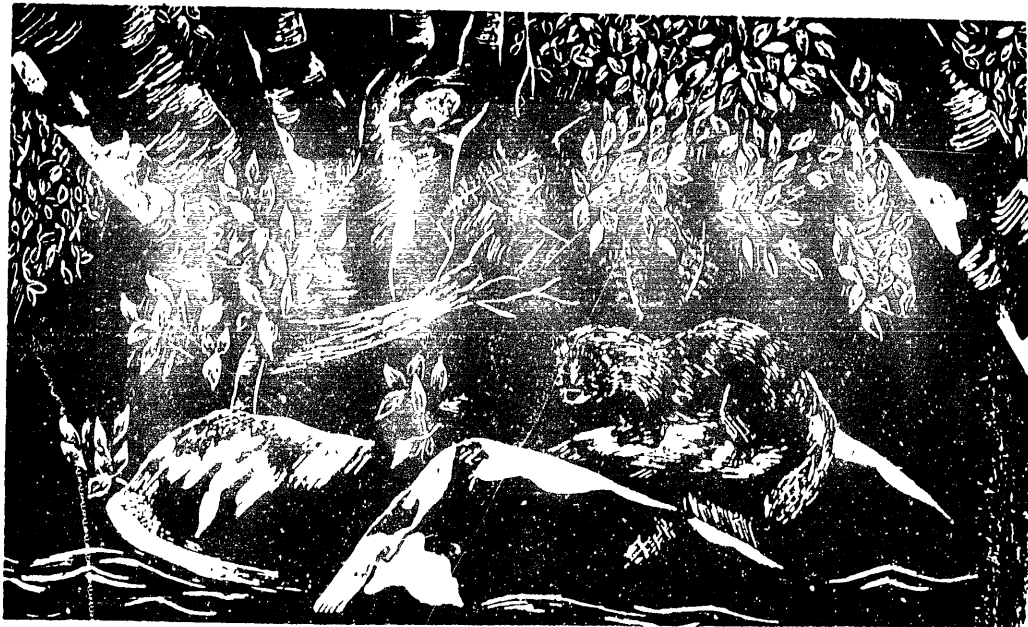
To be Adjutant General of Texas for a term to expire February 1, 1991: Brigadier General William C. Wilson, P.O. Box 823, Commerce, Texas 75428. General Wilson will be replacing General James T. Dennis of Bedford, whose term expired.

Issued in Austin, Texas on March 30, 1989.

TRD-8902842

William P. Clements, Jr.
Governor of Texas





Name: Sarah Weekes

Grade: 12

School: Plano High, Plano

Attorney General

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

Opinions

JM-1027 (RQ-1460). Request from James W. Smith, Jr., Frio County Attorney, Pearsall, concerning whether certain county road contracts must be competitively bid under court/engineer system, Texas Civil Statutes, Article 6702-1, §3.201.

Summary of Opinion. Under Texas Civil Statutes, Article 6702-1, §3.211, a contract for a \$9,128.04 purchase of emulsion for a county road under the court/engineer system must be made on competitive bids. There is no sole source exemption from the §3.211 competitive bidding requirement, which is applicable to such contract. Such a contract must also comply with the competitive bidding procedures prescribed by the Local Government Code, Chapter 262, Subchapter C. TRD-8902857

JM-1028 (RQ-1613). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning whether a judge or magistrate is a peace officer for various purposes.

Summary of Opinion. A judge or magistrate is not a peace officer as that term is used in the Government Code, Chapter 415. Nor is a judge or magistrate a peace officer as that term is used in the Code of Criminal Procedure and the Penal Code, judges or magistrates may not lawfully carry handguns. TRD-8902856

JM-1029 (RQ-1562). Request from Fred G. Rodriguez, Criminal District Attorney, Bexar County Courthouse, San Antonio, concerning whether an abstract of judgment must meet the requirements of the Property Code, §12.013.

Summary of Opinion. The requirement of the Property Code, §12.013, that a "judgment [be] . . . attested under the signature and seal of the clerk of the court that rendered judgment" prior to recordation does not apply to abstracts of judgment prepared and recorded under the Property Code, Chapter 52. TRD-8902855

JM-1030 (RQ-1582). Request from Dennis R. Jones, Commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning the authority of the Texas Department of Mental Health and Mental Retardation to transfer funds for start-up costs to a private entity that contracts to provide community-based services to clients of the department, and related questions.

Summary of Opinion. The Texas Department of Mental Health and Mental Retardation and mental health/mental retardation community centers may contract with private parties to plan and to provide for community-based services to mentally disabled clients. Both the department and community centers may pay start-up costs to non-governmental parties, provided that the public receives adequate consideration and the governmental body retains enough control over the expenditure of the funds to assure that the public purpose of community based mental health/mental retardation services is actually fulfilled. TRD-8902948

JM-1031 (RQ-1599). Request from Dennis R. Jones, Commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning the authority of the Department of Mental Health and Mental Retardation to impose certain requirements on contracts for community-based mental health and mental retardation services.

Summary of Opinion. The Texas Department of Mental Health and Mental Retardation has authority under Texas Civil Statutes, Article 5547-202, of §2.11(a), to adopt reasonable rules prohibiting its facilities from entering into contracts for community-based mental health and mental retardation services with former officers and employees, their spouses, and business entities in which the former employees or their spouses have a substantial financial interest for a specific period after the employees have terminated employment with the department. The department also has authority to adopt such rules for community centers established under Texas Civil Statutes, Article 5547-203, that receive contract funds

from the department under Texas Civil Statutes, Article 5547-204, §4.03. TRD-8902946

JM-1032 (RQ-1488). Request from Kenneth W. Littlefield, Commissioner, Texas Department of Banking, Austin, concerning appointments of a foreign trust company as trustee for Texas residents.

Summary of Opinion. The action of a foreign trust company in supplying information and forms to brokers employed by an affiliated Texas brokerage firm with the intention that they be distributed to customers of the brokerage firm who make general inquiries about the availability of trust services violates the Texas Probate Code, Article 105A(c). Appointments as trustee obtained by the foreign trust company pursuant to such a plan of business would be violative of the Texas statute. TRD-8902947

Open Records Decisions

ORD-521 (RQ-1320). Request from Fred G. Rodriguez, Bexar County Criminal District Attorney, Bexar County Courthouse, San Antonio, concerning whether certain custodial death reports are available to the public under the Texas Code of Criminal Procedure, Article 49.18, and the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

Summary of Decision. The Texas Code of Criminal Procedure, Article 49.18 subsection (b), requires that law enforcement agencies, jails, and prisons prepare and file reports with the attorney general about prisoners who die while in custody. These reports are not public information. TRD-8902859

ORD-522 (RQ-1628). Request from Hilary B. Doran, Jr., Chairman, Texas Racing Commission, Austin, concerning whether information in applications for licenses for pari-mutuel racetracks is available to the public.

Summary of Decision. Neither the Texas

Racing Act, Texas Civil Statutes, Article 179e, nor the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, authorize the Texas Racing Commission to withhold from public disclosure entire race-

track license applications. Specific provisions of the Racing Act authorize withholding criminal history information obtained from law enforcement agencies; and management and concession contracts submitted

as part of racetrack license applications. The protection in §2.15 for the commission's investigatory files does not apply to racetrack license applications; it applies to the commission's investigatory efforts.



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 7. Corporate and Financial

Subchapter J. Examination Expenses and Assessments

• 28 TAC §7.1007

The State Board of Insurance adopts on an emergency basis new §7.1007, concerning rates of assessments and charges to meet the expenses of examining insurance companies in 1989. An imminent peril to the public welfare requires adoption of this new section on an emergency basis in order to provide rates of assessment and charges sufficient to meet the expenses of performing the board's statutory responsibilities for examining insurance companies. Under the new section, the board levies rates of assessment and collects from each domestic insurance company on the basis of admitted assets and gross premium receipts for the 1988 calendar year, and from foreign insurance company under examination during the 1989 calendar year on the basis of a percentage of the gross salary the board paid to an examiner for each month or part of a month during the examination. The expenses and charges assessed under authority of this section are additional to and not in lieu of any other charge which may be made under law, including the Insurance Code, Article 1.16. The commissioner of insurance has certified the rates of assessment and charges set out in this section to be just and reasonable.

The new section, adopted on an emergency basis under the Insurance Code, Article 1.16, which authorizes and requires the State Board of Insurance to make assessments and charges to meet all expenses and disbursements required by law and necessary to comply with the provisions of the Insurance Code, Article 1.16-1.18, relating to the examination of insurance companies.

§7.1007. Domestic and Foreign Insurance Company Examination Expenses and Assessments, 1989

(a) Foreign insurance companies examined during the 1989 calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code, Article 1.16. Each foreign insurance company examined shall pay 36% of the gross salary

paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay, state contributions to retirement and social security matching expenses, and the state-paid portion of insurance premiums and vacation and sick leave accrual. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and the rates of assessment herein for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed that part of the annual salary attributable to each working day the examiner is examining the company. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead charge to cover the cost of administrative departmental expenses attributable to examination of companies shall be paid and computed as follows:

(A) 0.00843 of 1.0% of the admitted assets of the company as of December 31, 1988; and

(B) 0.02554 of 1.0% of the gross premium receipts of the company for the year 1988.

(3) If the overhead charge, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than \$25, a minimum overhead assessment of \$25 shall be levied and collected.

(4) The overhead assessments are based on the admitted assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

Issued in Austin, Texas, on March 30, 1989

TRD-8902942

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 31, 1989

Expiration date: July 29, 1989

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

TITLE 43.

TRANSPORTATION Part I. State Department of Highways and Public Transportation

Chapter 21. Right of Way Division

Utility Accommodation

• 43 TAC §§21.31, 21.32, 21.35, 21.37-21.40, 21.42-21.46, 21.48- 21.51, 21.53, 21.54

The State Department of Highways and Public Transportation is renewing the effectiveness of the emergency adoption of amended §§21.31, 21.32, 21.35, 21.37-21.40, 21.42-21.46, 21.48-21.51, 21.53, and 21.54, for a 60-day period effective April 4, 1989. The text of amended §§21.31, 21.32, 21.35, 21.37-21.40, 21.42-21.46, 21.48-21.51, 21.53, and 21.54 was originally published in the December 13, 1988, issue of the *Texas Register* (13 TexReg 6139).

Issued in Austin, Texas on March 30, 1989

TRD-8902841

Robert E. Shaddock
General Counsel
State Department of
Highways and Public
Transportation

Effective date: April 4, 1989

Expiration date: June 3, 1989

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

• 43 TAC §21.33

The State Department of Highways and Public Transportation is renewing the effectiveness of the emergency adoption of repealed §21.33 and §21.41, for a 60-day period effective April 4, 1989. The text of the repeal of §21.33 and §21.41 was originally published in the December 13, 1988, issue of the *Texas Register* (13 TexReg 6139).

Issued in Austin, Texas on March 30, 1989

TRD-8902841

Robert E. Shaddock
General Counsel
State Department of
Highways and Public
Transportation

Effective date: April 4, 1989

Expiration date: June 3, 1989

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

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• 43 TAC §21.33, §21.41

The State Department of Highways and Public Transportation is renewing the effectiveness of the emergency adoption of new §§21.33, 21.41 for a 60-day period effective April 4, 1989. The text of new §21.33, 21.41 was originally published in the December 13, 1988, issue of the *Texas Register* (13 TexReg 6139).

Issued in Austin, Texas on March 30, 1989.

IRD-8902839

Robert E. Shaddock
General Counsel
State Department of
Highways and Public
Transportation

Effective date: April 4, 1989

Expiration date: June 3, 1989

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

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 19. EDUCATION Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter E. Personnel Relationship

• 19 TAC §61.145

The Texas Education Agency proposes an amendment to §61.145, concerning the request and notification for cancellation or suspension of a certificate of school personnel involved in certain illegal activities. The proposed amendment would require the superintendent or president of a local school board to report to the commissioner of education the termination of a certified employee for reasons involving sexual or physical abuse of children; possession, distribution, or sale of illegal drugs; misappropriation of school property or funds; fraudulent or unauthorized use of a certificate or permit to obtain a position or additional compensation; or commission of any crime occurring in whole or in part on school property or at a school sponsored event. The superintendent or school board president also would be required to notify the commissioner whenever the district is made aware that one of its certified employees has been convicted of any felony or convicted of a misdemeanor involving any of the conditions listed previously.

Upon notification that a local board has taken such action, the agency's Division of Teacher Certification could initiate proceedings to request appropriate sanctions against the individual's certificate. The individual would be notified and provided an opportunity for a hearing before the commissioner as provided in the Texas Education Code §13.046, concerning suspension and cancellation of certificates. Following due process, the commissioner would utilize the information reported in accordance with this proposed amendment, together with any other additional evidence deemed appropriate, to make an informed decision concerning the status of a person's credential.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. As a result of this change in board rule, the agency would be required to provide full due process to any of the individuals submitted by school districts for censure. This process involves notifying the individual, providing for a hearing before the commis-

sioner, and notifying all districts in the state as well as all other state departments of education. There is no way to estimate how many additional individuals would be examined by the agency due to this change. This change would also require the superintendent or president of the board of trustees of a school district to report to the commissioner the termination of a certified employee for any of the reasons listed in the section. The cost to local school districts of providing this correspondence would be nominal. There will be no fiscal implications for small businesses as a result of enforcing or administering the section.

Mr. Moak and Oscar A. Rodriguez, planner I, also have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the protection of students and school districts. Without the assurance of notification provided by the proposed amendments, the commissioner may not be aware of the action taken by a local board of trustees and would be unable to make an informed decision with regard to an individual's credential. Consequently, the individual would be able to seek employment in another school district or state. There is no anticipated economic cost for individuals who are required to comply with the section.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed section submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code §13.046, which authorizes the commissioner of education to suspend or cancel a teacher's certificate under certain circumstances, and Texas Civil Statutes, Article 6252 13(c), which allows a licensing authority to suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

§61.145. Request and Notification for Cancellation or Suspension of a [Teacher] Certificate.

(a) [Policy.] The board of trustees of a school district may request the cancellation or suspension of a [teacher] certi-

cate by filing a complaint with the commissioner of education. [Request shall be in accordance with provisions of law (See Subchapter 0 of Chapter 141 of this title (relating to Reprimand, Suspension, Cancellation, and Reinstatement of Certificates)). (Reference Texas Education Code, §13.046 and §13.116.)]

(b) The superintendent or the president of the local board of trustees of a school district shall notify the commissioner of education whenever a certified employee is terminated by action of the board of trustees and the termination is related to the individual's commission of an act or suspected commission of an act which involves: [Administrative procedure. The commissioner of education, upon considering the request for evidence, may cancel or suspend the teacher certificate.]

(1) any form of sexual or physical abuse of a minor child, or any other illegal conduct with a minor child;

(2) possession, transfer, sale, or distribution of a controlled substance or illegal drug;

(3) illegal transfer, appropriation, or expenditure of school property or funds;

(4) an attempt by fraudulent or unauthorized means to obtain or alter an certificate or permit which would entitle the individual to a position or to receive additional compensation associated with a position; or

(5) commission of a crime occurring in whole or in part on school property or at a school sponsored event.

(c) The superintendent or the president of the board of trustees of a school district shall notify the commissioner of education when made aware of a certified employee's conviction of any felony, or conviction of a misdemeanor for an act or acts directly related to the categories cited in subsection (b) of this section.

(d) The Division of Teacher Certification, upon considering a request for cancellation or suspension, or upon receiving notification submitted pursuant to subsections (b) or (c) of this section, may commence sanction proceedings as provided in Chapter 141 Subchapter 0 of this title (relating to Reprimand, Suspen-

sion, Cancellation, and Reinstatement of Certificates) and Chapter 157 of this title (relating to Hearings and Appeals).

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 March 26, 1989.

TRD-8902861 W. N. Kirby
Commissioner of Education
Texas Education Agency

Proposed date of adoption: May 13, 1989

For further information, please call: (512) 463-9212

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**TITLE 22. EXAMINING
BOARDS**

**Part XI. Board of Nurse
Examiners**

**Chapter 217. Licensure and
Practice**

• **22 TAC §217.11**

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

The Board of Nurse Examiners proposes the repeal of §217.11, concerning standards of nursing practice. The Board of Nurse Examiners is proposing the repeal of this section to enable the adoption of a more detailed section that provides clarification to RNs as to the board's definition of the legal standards of nursing practice that would ensure the welfare of the patient/client.

Louise Waddill, R.N., Ph.D., executive secretary, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Waddill also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the repeal of the existing section will enable the adoption of a clearer definition of the legal standards of nursing practice for the registered nurse. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Louise Waddill, Executive Secretary, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The repeal is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice or professional nursing, and to determine whether or

not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

§217.11. Standards of Nursing Practice.

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 March 29, 1989.

TRD-8902824 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Proposed date of adoption: June 15, 1989

For further information, please call: (512) 835-4880

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The Board of Nurse Examiners proposes new §217.11, concerning standards of nursing practice. The Board of Nurse Examiners is proposing a new §217.11 concerning standards of nursing practice to provide clarification to RNs as to the board's definition of the legal standards of nursing practice that would ensure the welfare of the patient/client.

Louise Waddill, R.N., Ph.D., executive secretary, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Waddill also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that to implement the 1987 legislative changes to the Nurse Practice Act, more clearly defined standards of nursing practice were needed. In this proposed new section, RNs, employers of RNs, and the public will be provided a clearer definition of the standards of nursing practice. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Louise Waddill, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The new section is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

§217.11. Standards of Nursing Practice. The responsibility of the Texas Board of Nurse Examiners is to regulate the practice of professional nursing within the State of Texas. The purpose of defining standards of practice is to identify roles and responsibilities of the professional registered nurse

in any health care setting and as defined in the Nurse Practice Act. These standards for professional nursing practice shall promote the dignity of the patient/client and the quality of nursing care as well as protect the patient/client from incompetent, unethical, or illegal conduct of licensees. The registered professional nurse shall:

(1) know and conform to the laws and regulations governing the practice of professional nursing in the State of Texas;

(2) utilize the nursing process to provide individualized, goal directed nursing care by:

(A) performing nursing assessments regarding the health status of the patient/client;

(B) making nursing diagnoses which served as the basis for the strategy of care;

(C) developing a plan of care based on assessment and nursing diagnoses;

(D) implementing nursing care; and

(E) evaluating the patient's/client's responses to nursing interventions.

(3) institute appropriate nursing intervention which might be required to stabilize a patient's/client's condition and/or prevent complications;

(4) know the rationale for, the effects of, and the proper administration of the medications and/or treatments he/she administers;

(5) accurately report and document the patient's/client's symptoms, responses, and progress;

(6) respect the patient's/client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information;

(7) promote and participate in patient/client education and counseling based on health needs;

(8) collaborate with members of health disciplines in the interest of the patient's/client's health care;

(9) consult and utilize community agencies and resources for continuity of patient/client care;

(10) consult with the appropriate licensed practitioner to clarify any order or treatment regimen that the nurse has reason to believe is inaccurate and/or contraindicated;

(11) make assignments to other nursing personnel that take into consider-

ation patient safety and that are commensurate with the personnel's educational preparation, experience, and knowledge;

(12) supervise nursing care provided by nursing personnel for which he/she is administratively responsible;

(13) accept only those nursing assignments that are commensurate with his/her educational preparation, experience, and knowledge of patient safety; and

(14) be responsible for his/her continuing competence in nursing practice and individual professional growth.

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 March 29, 1989.

TRD-8902823

Louise Waddill
Executive Secretary
Board of Nurse Examiners

Proposed date of adoption: June 15, 1989

For further information, please call: (512) 835-4880

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TITLE 28. INSURANCE
Part I. State Board of Insurance

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

Subchapter A. Preparation and Submission of Individual Life Insurance and Annuity Forms

• 28 TAC §§3.1-3.9

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

The State Board of Insurance proposes the repeal of §§3.1-3.9, concerning the filing requirements for submission of policy forms to the Individual Life Section of the Life Group of the State Board of Insurance. Repeal of these sections is necessary to eliminate unnecessary provisions and to enable the board simultaneously to propose new Subchapter A, concerning requirements for filing of policy forms, riders, amendments, and endorsements for life, accident, and health insurance and annuities. New Subchapter A will contain §§3.1-3.5, with provisions similar to old §§3.1-3.9, in an effort to standardize filing requirements of all sections of the Life Group of the State Board of Insurance. Notification appears elsewhere in this issue of the *Texas Register* of the new sections proposed to replace §§3.1-3.9.

Kay Simonton, deputy insurance commissioner for the life group, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal impli-

cations for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Simonton 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 is more effective regulation of policy forms submitted through a more expeditious review process. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kay Simonton, Deputy Insurance Commissioner for the Life Group, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The repeals are proposed under the Insurance Code, Article 3.42(k), which authorizes the State Board of Insurance to adopt rules necessary to implement and accomplish the specific provisions of the article.

§3.1. Riders, Endorsements, Amendments, Insert Pages, and Other Supplemental Forms.

§3.2. Basic Policies.

§3.3. Tentative Drafts.

§3.4. Form Numbers.

§3.5. Duplicate Submissions.

§3.6. Blanks in Specimen Forms.

§3.7. Transmittal Letters and Additional Information.

§3.8. Actuarial Information.

§3.9. Filing Forms.

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 March 30, 1989.

TRD-8902936

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

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• 28 TAC §§3.1-3.5

The State Board of Insurance proposes new §§3.1-3.5, concerning preparation and submission of certain forms to the Life Group of the State Board of Insurance. The new sections concern preparation and submission of policy forms, riders, amendments, and endorsements for life, accident, and health insurance and annuities. The proposal of new §§3.1-3.5 as Subchapter A, concerning requirements for filing of policy forms, riders,

amendments, and endorsements for life, accident, and health insurance and annuities, is simultaneous with the proposed repeal of the old §§3.1-3.9 as Subchapter A, concerning preparation and submission of individual life insurance and annuity forms, and proposed repeal of §3.3030, concerning standards for policy forms submitted for approval. Notice of the proposed repeals appears elsewhere in this issue of the *Texas Register*. Regulated entities will file these forms with the Life Group, comprised of the Individual Life and Annuity Section, the Group Life and/or Group Accident and Health Section, the Credit Life and/or Accident and Health Section, and the Individual Accident and Health Section. Adoption of a uniform set of rules for all sections should alleviate confusion concerning the specific filing requirements for each section of the Life Group and result in a more expeditious review process. The new sections are necessary to standardize and disencumber the procedure for submitting policy forms to the State Board of Insurance for filing and/or approval, and thereby to facilitate and streamline the board's process for receiving and reviewing policy forms. Proposed §3.1 lists the types of forms to which the subchapter applies. Proposed §3.2 establishes general requirements for content and form of the submission. Section 3.3 would establish additional requirements for particular kinds of forms. Proposed §3.4 is designed to encourage communication between the staff of the Life Group and the industry, while providing a method to prevent a backlog of pending forms for which additional information has been requested but which the industry has elected not to pursue. Section 3.5 would require that forms be submitted in accordance with §3.2 in order to be accepted by the Life Group.

Kay Simonton, deputy insurance commissioner for the life group, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Simonton 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 more effective regulation of policy forms through a more expeditious review process. The uniform filing requirements provide clarifying language to promote greater understanding of the filing procedures, which will lead to an expedited review process. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposals may be submitted to Kay Simonton, Division Code 0830, Deputy Insurance Commissioner for the Life Group, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new sections are proposed under the Insurance Code, Articles 1.04(b), 3.42(k), and 3.53. Article 1.04(b) authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 3.42(k) authorizes the State Board of Insurance to adopt such reasonable rules and regulations as are necessary to implement and accomplish the specific provisions of the article, which requires filing, review, and/or

approval of life insurance and annuity forms and accident and health insurance forms. Article 3.53, §12, authorizes the State Board of Insurance to adopt such reasonable rules and regulations as are necessary to implement and accomplish the specific provisions of that article, which requires filing, review, and/or approval of credit life insurance and credit accident and health insurance forms.

§3.1. *Scope.* This subchapter applies to individual life forms, individual annuity forms, group annuity forms, group life forms, group accident and health forms, credit life forms, credit accident and health forms, and individual accident and health forms.

§3.2. *General Submission Requirements.*

(a) *Address.* Send forms to the Life Group, Division 830, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. To expedite the return of notices of proposed disapprovals or approvals, a company may enclose an overnight mail envelope together with either a completed form for transmittal or the company's billing number. The forms shall be sent to the attention of the appropriate section of the Life Group Division. The sections of the Life Group Division and the forms handled by each of these sections are as follows.

(1) Individual life and annuity section. Individual life forms, individual annuity forms, and group annuity forms.

(2) Group section. Group life forms and group accident and health forms.

(3) Credit section. Individual and group credit life forms and individual and group credit accident and health forms.

(4) Individual accident and health section. Individual accident and health forms.

(b) *Number of copies.* All forms, including resubmissions and corrections for pending forms, shall be submitted in duplicate.

(c) *Specimen language and fill-in material.* All forms shall be filled in with specimen language and specimen fill-in material. For individual life and annuity forms, the fill-in material in both copies of the form shall be completed for specimen age 35 unless the form is not issued at age 35. If not issued at age 35, the youngest age at which the form may be issued shall be used for the fill-in material. If reduced death benefits are provided for any age at issue, the specimen form shall be filled in for the age at issue for which the greatest reduction in benefits is made. The fill-in material shall be for the longest premium paying period available under the form.

(d) *Type of paper.* Forms shall be submitted on paper that will accept a rubber stamp and that is suitable for permanent filing and microfilming. Glossy stock paper

is not acceptable.

(e) *Print format.* Forms and corrections shall be submitted in final print, if possible. However, they may be submitted in typewritten, computer generated, or printer's proof format. All filings must be legible. Handwritten forms or handwritten corrections will not be accepted.

(f) *Form numbers.* Each form shall be designated by a form number sufficient to distinguish it from all other forms used by the insurer. The form number shall be located in the lower left-hand corner of the cover page or on the first page of the form if the form number would be visible with the cover closed. The cover and cover page of every form or schedule submitted to the commissioner of insurance for his consideration under the Insurance Code, Article 3.53, shall have added to its identifying form number the additional identification: "(3.53)" if used only within the scope of Article 3.53; "(3.53 and 3.50)" if group credit life and/or accident and health and used within the scope of Article 3.53 and Article 3.50; "(3.53 and 3.44)" if individual credit life and/or accident and health and used within the scope of Article 3.53 and Article 3.44; "(3.53 O.E.)" or "(3.53 R.A.)" to only be used if credit life and/or accident and health is written for use with open-end transactions.

(g) *Filing fee.* Each new submission shall be accompanied by the appropriate filing fee required by §7.1301 of this title (relating to Regulatory Fees).

(h) *Domiciliary approval.* For companies domiciled outside of Texas, a statement shall be submitted indicating whether domiciliary approval of the form has been granted and the date of the domiciliary approval. If the domiciliary state does not require approval of a form for use in the domiciliary state, a statement shall be submitted indicating whether the form has been filed and/or accepted for use in the domiciliary state and/or the date of acceptance by the domiciliary state. If the form is not to be used in the domiciliary state, a statement to that effect shall be submitted.

(i) *Filings under the Insurance Code, Article 3.42.* A statement shall be submitted electing the Insurance Code, Article 3.42, either paragraph (d)(1) or (d)(2). Some of the distinctions between a (d)(1) and a (d)(2) filing are as follows.

(1) A filing under the Insurance Code, Article 3.42(d)(1) allows the insurer to immediately issue, deliver, or use such form prior to review and approval, as applicable, after it has been received. All such filings shall be accompanied by the certification required by said statute. If such form is disapproved by the board, the insurer, upon receiving written notice, shall immediately cease issuing or using such form. The procedures for corrective actions are set forth in said statute.

(2) A filing under the Insurance Code, Article 3.42(d)(2) requires the insurer to file the form for review and approval, as applicable, prior to issuance, delivery, or use of such form as required by said statute.

(j) *Transmittal documents.* A transmittal letter and/or checklist in duplicate shall accompany every form submission. THE TRANSMITTAL LETTER AND/OR CHECKLIST SHALL BE ADDRESSED TO THE APPROPRIATE SECTION, AS SPECIFIED IN SUBSECTION (A) OF THIS SECTION. The transmittal letter and/or checklist shall supply the following information listed in paragraphs (1)-(20) of this subsection.

(1) The identifying form number of each form being submitted must be supplied.

(2) A statement of the type of coverages provided by the forms must be supplied.

(3) A statement must be supplied indicating whether the form is being filed under the Insurance Code, Article 3.42, paragraph (d)(1) or (d)(2). If the filing is made under paragraph (d)(1), the certification required by said statute shall be included in the filing.

(4) A statement must be supplied indicating whether domiciliary approval of the forms has been granted, if applicable, and the date of domiciliary approval. If the domiciliary state does not approve forms, a statement must be supplied indicating whether the forms have been filed and accepted for use in the domiciliary state and the date of acceptance by the domiciliary state.

(5) For individual life and annuity forms and group life, accident, and health and annuity forms only, if the forms are exempt from review, a statement to that effect must be supplied as well as a statement specifying which subparagraph of §3.4004 of this title (relating to Exempt Forms) under which the form is considered exempt from review. The exempt certification required by §3.4005 of this title (relating to General Information) shall be included with the filing.

(6) If the forms are new, a statement to that effect shall be included, along with one of the following statements contained in subparagraph (A), (B), or (C) of this paragraph.

(A) The new forms are not (to our knowledge) substantially similar to any other previously approved form:

(B) The new forms are substantially similar to a previously approved form. The insurer shall then also specify all the following information in clauses (i)-(iv) of this subparagraph.

(i) The form number of

the previously approved form shall be specified.

(ii) The approval date of the previously approved form shall be specified.

(iii) The company name for which the previously approved form was approved shall be specified.

(iv) A summary of the differences between the previously approved form and the new form shall be provided. If possible, the insurer shall include a copy of the previously approved form with the portions of the form which have been changed highlighted in the previously approved form. The insurer shall not highlight any portion of the new form because when microfilmed the highlighted portions may be illegible.

(C) The new forms are exact copies of previously approved forms with the exception of the company name. The certification required by §3.4008 of this title (relating to Copies of Previously Approved Forms) shall be included with the filing.

(7) If the forms are corrected versions of pending forms which have been reviewed, a statement to that effect shall be included, and the transmittal letter shall be addressed to the analyst reviewing the forms. The following information shall also be provided:

(A) the form numbers of the pending forms for which the corrections are submitted; and

(B) a summary of all changes made in the corrected version of the forms.

(8) If the forms are a resubmission of previously disapproved forms, a statement specifying the form numbers of the previously disapproved forms and the date of disapproval, along with a summary of any changes made in the resubmitted forms, must be supplied.

(9) If the form is a substitution for a previously approved form which has never been issued in the state, a certification to that effect must be supplied, along with the approval date and form number of the previously approved form, and an explanation of the changes made to the form.

(10) For individual life and annuity forms only, if the form is an update to a previously approved form which has been issued in the state, an explanation of the benefits being provided by the update, a statement indicating the form numbers and approval dates of the forms being updated, and a statement explaining which policyholders will be offered the update must be supplied.

(11) If the submitted form (rider, amendment, endorsement, insert page, or supplemental form) is for use with specific policies, a listing of the policy form numbers and approval dates with which the submitted form is to be used, along with a statement explaining when the form will be used with the policy forms in the listing, must be supplied.

(12) If the submitted form (rider, amendment, endorsement, insert page, or supplemental form) is for general use with various policies, a description of the types of policies with which the submitted form is to be used and a statement explaining when the form will be used with those policies must be supplied.

(13) For individual life and annuity forms only, if the form is not a policy, then policy schedule/data pages showing all material pertinent to the form must be supplied if such material is necessary for a comprehensive review of the form.

(14) For group life and group accident and health forms only, the section of the Insurance Code, Article 3.50; Article 3.51-6; or both, that describes the group to be issued the forms must be supplied. Be sure that the composition of the group to be covered meets the definition in the statute.

(15) For group life and group accident and health forms only, a statement must be supplied indicating whether the

company wants the form considered for issuance on a discretionary basis under the Insurance Code, Article 3.50, §1(6); Article 3.51-6, §1(a)(6); or Article 3.51-6, §2(a)(9), if the group is not precisely described in the Insurance Code, Article 3.50, §1, Article 3.51-6, §1(a); or Article 3.51-6, §2(a).

(16) For group life, group accident and health, credit life, and credit accident and health forms only, a statement must be supplied clarifying if the forms are a partial filing. If so, provide the following:

(A) a statement indicating if the forms are for general use along with a description of the types of policies with which the forms will be used;

(B) a statement clarifying the purposes of the forms submitted; and

(C) a statement specifying if the forms are to be used with previously approved forms. If so, provide the form numbers and the approval dates.

(17) For credit life and credit accident and health forms only, a statement must be supplied specifying the range of duration of loans or credit transactions for which insurance coverage will be provided.

(18) For individual accident and health forms only, a brief statement of the marketing approach to be used must be supplied.

(19) Any actuarial information necessary for a complete review of the forms must be supplied. For individual life and annuity forms, specific requirements are set forth in §3.3(a)(7) of this title (relating to Specific Additional Submission Requirements).

(20) Any additional information necessary for a comprehensive review of the forms must be supplied.

(21) A transmittal letter/checklist, for each section, is set forth in the following forms to assist in the preparation of filings. The checklist may be duplicated, expanded, filled in, and/or used as or with the transmittal letter.

INDIVIDUAL ACCIDENT & HEALTH FORMS
Transmittal Letter/Information Checklist

Company Name _____
Name & Title of Person To Contact _____
Telephone Number _____
Fax Number _____
(1) Form Number _____
(2) Type of Form _____
(3) (d)(2) Filing _____ (d)(1) Filing _____
(d)(1) Certification attached _____
(4) Domiciliary Approval - Yes _____ /No _____
(5) New Form - Yes _____ /No _____
New Form is similar to form number _____
Approval Date _____
Explanation of the differences _____
(6) Resubmission for Disapproved Form # _____
Disapproved on _____
Changes to resubmitted form are _____
(7) Substitution for form # _____
Approval Date _____
Certification regarding issuance of previously approved form
attached - Yes _____ /No _____
Changes to form due to substitution are _____
(8) Form similar to previously approved Form # _____
(9) Corrections to Pending Form # _____
Submitted on _____

Corrections made _____

- (10) Submitted form is for use with Form # _____
Approval Date _____
- (11) Form changes a provision in Form # _____
Approval Date _____
Will be used in the following manner _____
- (12) Miscellaneous information pertinent to the form _____
- (13) Filing Fees Included - Yes _____ / No _____
Amount of Fee Included _____
Reason Not Included _____
- (14) Actuarial Information Included - Yes _____ / No _____

GROUP LIFE AND/OR ACCIDENT & HEALTH FORMS

Transmittal Letter/Information Checklist

- Company Name _____
Name & Title of Person to Contact _____
Telephone Number _____
Fax Number _____
- (1) Form Number _____
(2) Type of Coverage - Life _____ A&H _____ Life, A&H _____
(3) Type of Group: Article 3.50, Section _____
Article 3.51-6, Section _____
(4) (d)(2) Filing _____ (d)(1) Filing _____
(d)(1) Certification _____
(5) Domiciliary Approval: Yes _____ Date of Approval _____
No _____ Why _____
(6) Exempt from Review: Yes _____ /No _____
Exempt Certification attached _____
Subsection _____ of Sec. 3.4004 _____
(7) New Form: Yes _____ /No _____
New Form is similar to form number _____ /Approval Date _____
Explanation of the differences _____
(8) Resubmission for Disapproved Form # _____
Disapproved on _____
Changes made _____
(9) Substitution for Form # _____
Approved on _____
Certification that the previously approved
forms have not been issued in Texas _____
Changes made to substitute form _____
-
- (10) Submitted Form is for use with Form # _____
Approved on _____
General use _____
Purpose of filing _____
(11) Corrections to Pending Form # _____
Submitted on _____
Analyst reviewing pending forms _____
Corrections made _____
-
- (12) Miscellaneous information pertinent to the submission _____
(13) Filing Fees Included - Yes _____ /No _____
Amount of Fee Included _____
Reason Not Included _____
(14) Actuarial Information Included - Yes _____ /No _____

CREDIT LIFE AND/OR CREDIT ACCIDENT & HEALTH FORMS
Transmittal Letter/Information Checklist

- Company Name _____
Name & Title of Person To Contact _____
Telephone Number _____
Fax Number _____
(1) Form Number _____
(2) Type of Plan - Life _____ A&H _____ Life, A&H _____
(3) Type of Coverage - Group _____ Individual _____
(4) (d)(2) Filing _____ (d)(T) Filing _____
(d)(T) Certification _____
(5) Domiciliary Approval: Yes _____
Date of Approval _____
No _____ Why _____
(6) Rates and Refund Formulae: Life _____ A&H _____
(7) New Form: Yes _____ /No _____
New Form is similar to form number _____
Approval Date _____
Explanation of the differences _____
(8) Resubmission for Disapproved Form # _____
Disapproved on _____
Changes made _____
(9) Substitution for Form # _____
Approved on _____
Certification that the previously approved forms have not
been issued in Texas _____
Changes made to substitute form # _____
(10) Submitted Form is for use with Form # _____
Approved on _____
General use _____
Purpose of filing _____
(11) Corrections to Pending Form # _____
Submitted on _____
Analyst reviewing pending forms _____
Corrections made _____
(12) Miscellaneous Information pertinent to the submission _____
(13) Filing Fees Included - Yes _____ /No _____
Amount of Fee Included _____
Reason Not Included _____
(14) Actuarial Information Included - Yes _____ /No _____

§3.3. Specific Additional Submission Requirements.

(a) Individual life and annuity forms.

(1) Riders, endorsements, amendments, insert pages, and other supplemental forms. Although it is recognized that a rider, endorsement, amendment, insert page, or supplemental form is merely a part of the entire written contract between the policyholder and the insurer, each form will be reviewed and approved (as applicable) and/or accepted for filing independently of the basic contract of which it is a part, provided that:

(A) the form does not change the basic concept and/or plan of the contract;

(B) the form can be comprehensibly analyzed and reviewed and is understandable apart from the base policy (contract);

(C) the form does not provide benefits which are combined with base policy benefits in a manner such that the benefits of the form cannot be analyzed and reviewed apart from the base policy; and

(D) the form, if changing the benefits provided under the basic contract for some issues of the basic contract, will not be used such that the basic contract will be issued to provide benefits on a basis which is unfairly discriminatory.

(2) Severable and nonseverable forms. A form which can be reviewed independently of the basic contract is considered severable. A form which cannot be reviewed independently of the basic contract is considered nonseverable. Some examples of severable forms are the following.

(A) A waiver of premium rider is a severable form.

(B) An application is a severable form.

(C) An endorsement amending the calculation of nonforfeiture benefits is a severable form if the endorsement is for use in a particular market (such as all new issues of a particular policy).

(D) An endorsement amending the partial surrender provision is a severable form if the endorsement is for use in a particular market (such as all new issues of a policy when the initial amount of insurance is \$100,000 or more).

(E) An insert page for nonforfeiture values, for a previously approved policy form, is a severable form when the policy form is intended for use in a market which requires the use of nonforfeiture values which are different from those approved in the original policy form. This could be applicable to policies which are for use in the unisex market, when the insurer decides (after receiving approval of a particular base policy for use in the sex distinct market) to seek approval of a version of the policy for use in a market which is subject to the Norris Decision.

(F) An update endorsement which is optional to existing policyholders of a particular policy form and which provides a benefit that is more favorable than benefits which are provided under the in-force policy is a severable form.

(3) Acceptance for independent review. In handling forms under this section, the commissioner will determine whether the form is acceptable for independent review. The contract form to which a nonseverable rider, endorsement, amendment, insert page, or other supplemental form is to be attached, must be filed under an adjusted form number if that contract form has been previously approved without the nonseverable form. The adjusted form number may be made by a typewritten prefix or suffix or rubber stamp for cases where the contract is issued with the nonseverable form. Nonseverable forms include, but are not limited to, the following:

(A) a form which adds an option to suspend premium payments;

(B) a form which changes the contract from a fixed premium life policy to a flexible premium life policy;

(C) a form which changes the contract from a fixed benefit policy to a variable benefit policy;

(D) a policy cover or policy shell;

(E) a corrective endorsement which adds required language to a form;

(F) a form which adds additional insurance with cash values and refers to the policy for the paid-up nonforfeiture benefits to be provided by the cash value of the form; and

(G) an insert page providing nonforfeiture benefits on the basis of one interest rate (such as 6.0%) which is to be issued as part of a particular policy form when that policy form is also being issued

with an insert page providing nonforfeiture benefits on the basis of a different interest rate (such as 5.0%).

(4) Complete submission of a basic policy form or certificate form. In order to be complete, the submission of a basic policy form or certificate form shall include the application to be used with it, any amendments or endorsements which will be included in all issues of the form, and all insert pages which may be used with the form. For example: a basic life insurance policy, intended for issue as a unisex plan and a sex distinct plan, should be submitted with the insert pages for both plans included in the policy and with the application included. Any optional rider which is severable should not be included in the basic policy.

(5) Variable material. The text and specifications of nonforfeiture assumptions included in individual life forms generally cannot be considered variable material. Any variable material in a form should be bracketed and a clear explanation of how the material will vary should be provided. It is acceptable for certain material to vary due solely to the age, sex, or classification of the insured; but other types of variations may require a limited partial refiling or a complete refiling depending on the manner in which the company plans to use the variations.

(6) Limited/partial refiling. A change in the text or nonforfeiture assumptions of a previously approved form shall be handled as a limited/partial refiling provided that such a refiling is severable in accordance with paragraphs (1)-(3) of this subsection. Paragraph (2)(C)-(E) of this subsection contain examples of acceptable limited/partial refilings.

(7) Actuarial information. Each form (including insert pages and other forms which change the nonforfeiture values of a particular form) shall be accompanied by the information listed in subparagraphs (A)-(C) of this paragraph, when applicable. If calculated material for the requirements of paragraph (1) of this subsection is available in standard published books, the letter of transmittal may cite such books in lieu of providing the information required.

(A) The mathematical formulas and sample calculations for the following items shall accompany the form.

(i) Net premiums for the specimen age and plan of insurance should be provided.

(ii) Specimen nonforfeiture calculations necessary to verify consistency between the nonforfeiture values and the text of the form for years one, 20, and 50 should be provided.

(iii) Terminal reserves for

the specimen age and plan should be provided.

(iv) Any other calculations necessary to verify nonforfeiture values and reserves should be provided.

(B) An actuarial memorandum which provides the following information in clauses (i)-(iv) of this subparagraph shall accompany the form (as applicable).

(i) For universal life and interest sensitive forms, the mortality table, guaranteed interest rates, maximum surrender charges, maximum expense charges, maximum risk rates (cost of insurance rates), maximum loads, and maximum fees at issue and upon a change in basic coverage, for all ages, bands, and risk classes should be provided.

(ii) For universal life forms, actuarial proof that cash surrender values meet the minimum requirements of the Insurance Code, Article 3.44a, should be provided. A comparison table of all guaranteed cash surrender values, standard nonforfeiture law minimum cash surrender values, guaranteed death benefits, and reserves should be provided. Such comparison should be based on the fill-in issue age (usually age 35), a premium which will provide coverage to the latest available maturity date, the minimum issue amount, minimum guaranteed interest rates, maximum guaranteed cost of insurance rates (mortality rates), and maximum guaranteed charges.

(iii) For variable life forms, actuarial material should be provided as required by §3.804 of this title (relating to Insurance Contract and Filing Requirements), and as required by this section if the form contains an option to allocate premiums to a fixed account.

(iv) For annuities, an actuarial memorandum should be provided specifying the guaranteed interest rates, the maximum surrender charges, and any other maximum charges applicable in the determination of the nonforfeiture values. If the insurer wishes to change the guaranteed interest rates specified in the form, notification must be submitted prior to the change. The notification must specify the new guaranteed interest rate and the date when it will be effective for new issues of a specified policy form, as required by §3.1004 of this title (relating to Policy Form Review).

(v) For variable annuities, the actuarial material required by §3.705 of this title (relating to Contract Requirements) should be provided as well as actuarial material required by this section for annuities, to the extent such material is applicable.

(C) A statement should be provided to the effect that plans of insurance and ages other than the specimen plan and age for which the form will be used

will have premiums, reserves, and nonforfeiture values calculated in a manner consistent with the information furnished with such specimen. Any exceptions must be specified, including any variation in formulas at different ages at issue or at time of a change.

(b) Group life and group accident and health forms.

(1) Partial form filings. The company may separately submit amendments, riders, endorsements, or alternate insert pages to be added to a form to make it comply with Texas statutes and rules, to add additional benefits to a previously approved group contract, or to amend a previously approved group contract. Each must bear an identifying form number as required by §3.2(f) of this title (relating to General Submission Requirements).

(2) Resubmitted forms. If the company resubmits previously disapproved forms, the resubmission must include all forms for which the company is seeking approval.

(3) Variable material. If a form with variable material is submitted, enclose the variable material in brackets and be clear how the company intends to use it. This material may not be less favorable than required by Texas statutes or rules and regulations.

(4) Complete submission of a policy or certificate. In order to be complete, a submission of a policy or certificate must include all applications that will be used with it. It must also include amendments, riders, or endorsements to the policy or certificate that are necessary to comply with Texas statutes or rules. These must be included even if previously approved.

(5) Submission of certificate. A copy of the master policy must accompany any certificate submitted, even if the master policy is issued outside Texas.

(6) One form submission: one type of group.

(A) Designation of type of group. The company must clearly state the type of group to which the form will be issued, referring to the appropriate section of the Insurance Code, Article 3.50; Article 3.51-6; or both. Do not submit a policy and certificate for use with more than one type of group.

(B) Association group. The following instructions apply to submission of a form intended to be issued to an association.

(i) The company shall submit documentation including, but not limited to, a copy of constitution and by-laws to show that the association meets the requirements of the Insurance Code, Article 3.50, §1(10); Article 3.51-6, §1(a)(2); or

both.

(ii) The company may submit forms on an ABC Association basis. If a form is approved on this basis, the company shall submit the documentation called for in clause (i) of this subparagraph when the form is issued. In addition, the company shall submit an alternate policy face page, identifying the association and the policy number assigned, each time the form is issued to a different eligible association.

(C) Multiple employer trustee group. The following instructions apply to submission of a form intended to be issued to a multiple employer trustee group.

(i) The company shall file a copy of the trust agreement for information.

(ii) The company may use alternate policy face pages with the policy numbers assigned, as well as alternate insert pages, for various related industries.

(iii) The company may submit forms on an ABC Trust basis. If a form is approved on this basis, the company shall file the individual trust agreements when the form is issued. In addition, the company shall submit an alternate policy face page, identifying the policyholder and the policy number assigned, each time the form is issued to a particular trust.

(c) Credit life and disability forms.

(1) Partial form filings. The company may separately submit amendments, riders, endorsements, or alternate insert pages to be added to a form to make it comply with Texas statutes and rules, to add additional benefits to a previously approved group contract, or to amend a previously approved group contract. Each must bear a unique identifying form number.

(2) Resubmitted forms. If the company resubmits previously disapproved forms, the resubmission must include all forms for which the company is seeking approval.

(3) Variable material. If a form with variable material is submitted, enclose the variable material in brackets and be clear how the company intends to use it. This material may not be less favorable than required by Texas statutes or rules and regulations.

(4) Complete submission of a policy or certificate. In order to be complete, a submission of a policy or certificate must include all applications that will be used with it. It must also include amendments, riders, or endorsements to the policy or certificate that are necessary to comply with Texas statutes or rules. These must be included even if previously approved.

(5) Submission of certificate. A copy of the master policy must accompany any certificate submitted, even if the master policy is issued outside Texas.

(6) Submission of rates. A schedule of premium rates to be used with all forms delivered or issued for delivery in the state must be submitted. Additionally, the formula or a reference to the method that is used to compute refunds must be submitted.

(d) Individual accident and health forms.

(1) Objections to the forms submitted for approval shall be corrected through resubmission rather than by attachment of riders or endorsements.

(2) Any policy form, rider, or endorsement which is to be issued with the application attached shall have a copy of the application form attached at the date of submission.

(3) The appropriate outline of coverage shall be filed with each policy form submission. The readability test applied and the resulting score of outline of coverage must also be filed.

(4) A brief statement of the marketing approach to be used shall be filed.

(5) The rate schedule to be utilized with each individual accident and sickness policy shall be filed in duplicate at the time the policy form is submitted for approval. All rate increases shall be filed in duplicate. Rate increases exceeding 150% require actuarial data to substantiate the increase.

(6) Supporting actuarial data shall be submitted with all Medicare supplement policy rate filings.

(7) Any supplemental coverage policy form submitted for approval shall be accompanied by a letter, signed by an officer of the company, certifying that the policy shall be marketed only as supplemental coverage as it is defined in §3.3080 of this title (relating to Supplemental Coverage).

§3.4. Pending Status. Forms submitted in accordance with these filing requirements will be affirmatively approved or disapproved within the statutory deemer period unless, prior thereto, the company has been contacted by a life group analyst for corrections needed to bring the submitted forms into complete compliance with the Insurance Code and the applicable regulations of the State Board of Insurance. Upon initial contact to the company, and consent thereof, the deemer shall be waived and the submission shall be held in a pending status for 60 days from the date of initial contact. If no response is received from the company by the end of the 60-day period, the State Board of Insurance shall return one copy of the form which shall be considered withdrawn from further consideration until

and unless refiled. A company may request a specific longer period of time if the objections cannot be corrected within 60 days.

§3.5. Filing Forms. Each form filed for use in Texas must be submitted in accordance with §3.2 of this title (relating to General Submission Requirements); otherwise, the form will not be accepted for review and approval (as applicable) and/or accepted for filing.

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 March 30, 1989.

TRD-8902934 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

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

• 28 TAC §3.3030

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

The State Board of Insurance proposes the repeal of §3.3030, concerning the standards for policy forms submitted for approval. The repeal of this section is necessary to eliminate unnecessary provisions and to enable the board simultaneously to propose new Subchapter A, concerning requirements for filing of policy forms, riders, amendments, and endorsements for life, accident, and health insurance and annuities. New Subchapter A contains §§3.1-3.5, with provisions similar to §3.3030, in an effort to standardize filing requirements for all sections of the Life Group of the State Board of Insurance. Notification appears elsewhere in this issue of the *Texas Register* of the new sections proposed to replace §3.3030.

Kay Simonton, deputy insurance commissioner for the life group, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Simonton also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is more effective regulation of policy forms submitted through a more expeditious process. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Kay Simonton, Deputy Insurance Commissioner for the Life Group, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The repeal is proposed under the Insurance Code, Article 42(k), which authorizes the State Board of Insurance to adopt rules necessary to implement and accomplish the specific provisions of the article.

§3.3030. Standards for Policy Forms Submitted for Approval.

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 March 30, 1989.

TRD-8902935 Nicholas Murphy
Chief Clerk
State Board of Insurance

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

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Chapter 5. Property and Casualty Insurance

Subchapter A. Automobile Insurance

Certificates of Assumption

• 28 TAC §5.11

The State Board of Insurance proposes new §5.11, concerning requirements for certificates of assumption of the contract liabilities of automobile insurance policies. Section 5.11 was adopted on an emergency basis and became effective on December 12, 1988. Notice of the emergency adoption appeared in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6383). Notification of an amendment to the emergency adoption appeared in the February 7, 1989, issue of the *Texas Register* (14 TexReg 652). The new section allows assumption only concerning policies for a company in receivership or conservatorship, for which a reinsurance agreement approved by court order, commissioner's order, or board order applies. The new section adopts by reference a certificate of assumption form. The board has filed a copy of the certification form with the Secretary of State's office, Texas Register division. Copies of the certificate form are available at the offices of the Automobile and Miscellaneous Lines Divisions of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

John D. Collins, director of automobile insurance and miscellaneous lines, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Collins 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 is prevention of a lapse in coverage for policyholders of an in-

insurance company in conservatorship or liquidation. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John D. Collins, Division 0512, Director, Automobile and Miscellaneous Lines, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 5.06 and Article 5.10, which authorizes the State Board of Insurance to prescribe and adopt forms, certificates, and rules necessary to carry out the regulation of automobile insurance in this state.

§5.11. Certificates of Assumption. A certificate of assumption may be attached only to a policy issued for a company in receivership or conservatorship, for which a reinsurance agreement approved by a court order, commissioner's order, or board order applies. For utilization under this section, the State Board of Insurance adopts by reference a certificate of assumption form which is published by the State Board of Insurance and available from the Automobile and Miscellaneous Lines Division of the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 March 30, 1989.

TRD-8902940 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

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Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.57

The State Board of Insurance proposes new §7.57, concerning corporate and financial regulation. Section 7.57 was adopted on an emergency basis and became effective on February 28, 1989. Notice of the emergency adoption appeared in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1151). Section 7.57 concerns forms and instructions for the preparation and filing of tax returns for insurers and other entities required to file tax returns with the State Board of Insurance for the 1988 calendar year or required to file quarterly premium tax returns with the board during the 1989 calendar year. This new section is necessary to provide forms and instructions which will facilitate compliance with statutory requirements for

reporting and payment of taxes to the State Board of Insurance. The annual gross premium tax return is required by statute to be filed either on or before March 1, 1989, or the date the annual statement for the carrier is required to be filed with the board. Quarterly tax returns are required to be filed four times per year: the first quarter is due and payable March 1, 1989, (or the date the annual statement for such carrier is required to be filed with the State Board of Insurance); the second quarter is due and payable May 15, 1989; the third quarter is due and payable August 15, 1989; and the fourth quarter is due and payable November 15, 1989. The forms and instructions include requirements for information respecting gross premium taxes, maintenance taxes, other taxes, and certain incidental fees, and provide a form to be used in determining and reporting the amount owed. Proposal of this section includes proposed adoption by reference of forms and instructions. The board has filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Division. Persons desiring copies of the forms and instructions can obtain copies from the Tax Collection Section of the Administrative Services Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin, Texas.

Lillian Talley, director, tax collection section, operating service group, has determined that for the first five-year period the proposed section will be in effect there will be the administrative cost in completing the forms and following the instructions. This cost will be at least partially offset because tax returns are statutorily required in some form in any case. There is no expected difference in cost of compliance between small and large businesses on a cost per hour of labor basis. There will be no effect on state or local government.

Ms. Talley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the adoption of appropriate forms and instructions to facilitate proper tax returns by insurers and other entities required to report and pay taxes to the State Board of Insurance. The anticipated economic cost to individuals who are required to comply with the proposed section will be the administrative cost in completing the forms and following the instructions. This cost will be at least partially offset because tax returns are statutorily required in some form in any case. The cost will depend on each company's record-keeping practices and type of operation.

Comments on the proposal may be submitted to Nicholas Murphy, Division Code 0110, Chief Clerk, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Texas Insurance Code, Articles 1.04, 1.10, §9, 4.07, 4.10, 4.11, 4.11A, 5.12, 5.24, 5.49, 5.68, 9.46, 9.59, 21.07-5, and 23.08; the Texas Health Maintenance Organization Act, §22 and §33; and Texas Civil Statutes, Article 6252-13a, §4, and Article 8306, §28. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the State Board of Insurance. Article 1.10, §9, requires the board to furnish, to companies

required to report to the board, statement blanks for the statements required. Article 4.07 specifies the charges for certain fees. The Insurance Code, Articles 4.10, 4.11, and 9.59; Texas Civil Statutes, Article 8306, §28; and the Texas Health Maintenance Organization Act, §33, require the payment of taxes on gross premiums by entities regulated by the board or on gross amounts of similar revenue by health maintenance organizations. The Insurance Code, Article 4.11A, requires the payment of taxes on the gross amount of administrative or service fees received by an insurance carrier. The Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, and 23.08, requires the payment of maintenance taxes by certain entities regulated by the board. The Insurance Code, Articles 4.10, 4.11, and 4.11A, gives the board rulemaking authority. The Texas Health Maintenance Organization Act, §22 gives the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice setting forth the nature and requirements of all procedures available.

§7.57. Preparation of 1988 Tax Returns. Forms and instructions for the preparation of tax returns and certain fees for insurance companies and other principals for the 1988 calendar year are adopted by reference. These instructions and forms are published by the State Board of Insurance and may be obtained from the Tax Collection Section of the Administrative Services Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin, Texas 78701. Each insurer or other entity shall follow such instructions and use and report on such forms as appropriate to its operation. The instructions and forms are more particularly identified as follows:

(1) a form identified as the 1988 General Instructions for Filing Texas Annual Tax Returns for All Texas Licensed Insurance Carriers;

(2) a form identified as the 1988 Specific Instructions for Completing the Texas Annual Tax Return, for Domestic, Foreign, and Alien Life, Health and Accident Carriers;

(3) a form identified as the 1988 Texas Annual Tax Return for Domestic, Foreign, and Alien Life, Health and Accident Companies Doing Business in the State of Texas;

(4) a form identified as the 1988 Specific Instructions for Completing the Texas Annual Tax Return for Domestic, Foreign, and Alien Companies transacting Fire and/or Casualty Business in Texas;

(5) a form identified as the 1988 Texas Annual Tax Return for Domestic, Foreign, and Alien Companies, Lloyds, Reciprocal, and Miscellaneous Organizations;

(6) a form identified as the 1988 Texas Specific Instructions for Completing the Texas Annual Tax Return for Health Maintenance Organizations;

(7) a form identified as the 1988 Texas Annual Tax Return for Health Maintenance Organizations;

(8) a form identified as the 1988 Texas Annual Tax Return, including instructions, for Nonprofit Prepaid Legal Services Corporations;

(9) a form identified as the 1988 Texas Annual Tax Return, including instructions, for Local Mutual Aid Associations;

(10) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Life, Health, and Accident Business;

(11) a form identified as the 1989 Texas Quarterly Premium Tax Return for Life, Health, and Accident Business;

(12) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Fire and Casualty Business;

(13) a form identified as the 1989 Texas Quarterly Premium Tax Return for Fire and Casualty Business;

(14) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Health Maintenance Organizations;

(15) a form identified as the 1989 Texas Quarterly Premium Tax Return for Health Maintenance Organizations;

(16) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Title Business;

(17) a form identified as the 1989 Texas Quarterly Premium Tax Return for Title Business;

(18) a form identified as the 1989 General Instructions for Completing Texas Annual Tax Return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(19) a form identified as the 1988 Texas Annual Tax Return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(20) a form identified as the 1988 General Instructions for Filing the 1988 Maintenance Tax Returns for Third Party Administrators;

(21) a form identified as the 1988 Annual Texas Maintenance Tax Return for Third Party Administrators;

(22) a form identified as the 1989 Specific Instructions for Preparing and Filing the Texas Quarterly Administrative Services Tax Return;

(23) a form identified as the 1989 Quarterly Texas Tax Return for Administrative Services;

(24) a form identified as the Specific Instructions for Completing the 1988 Texas Annual Tax Return for Administrative Services;

(25) a form identified as the General Instructions for Filing the 1988 Administrative Services Tax Return;

(26) a form identified as the 1988 Annual Texas Tax Return for Administrative Services;

(27) a form identified as the Specific Instructions for Completing the 1988 Texas Annual Tax Return for Title Business; and

(28) a form identified as the 1988 Texas Annual Tax Return for Domestic and Foreign Title Companies.

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 March 30, 1989.

TRD-8902901 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

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Chapter 19. Agent's Licensing
Subchapter H. Variable
Contract Agents

• 28 TAC §19.703

The State Board of Insurance proposes an amendment to §19.703, concerning licensing and regulations of variable contract agents. The amendment is necessary to make the provisions of rules under the Insurance Code, Article 3.75, for licensing of variable contract agents more closely in accord with statutory provisions for licensing of other types of agents under the Insurance Code, Chapter 21, Subchapter A. The amendment provides for licensing of the wholly owned subsidiary of a parent corporation under certain conditions, and allows licensing of a corporation with insurance against errors and omissions with a \$10,000 deductible feature. Prior to this proposal the section has limited the deductible feature to \$5,000.

Jack Evins, deputy insurance commissioner for licensing, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. For small businesses the fiscal implication of the section is a reduction of the anticipated cost of compliance with the section, because a higher deductible feature produces a lower premium for insurance. For small or large businesses, the reduction in premium for an errors and omissions policy in the sum of \$100,000 would be approximately 10%, which would be a reduction of approximately

\$30 in cost per employee under coverage.

Mr. Evins 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 consistency in the licensing of various types of agents. The anticipated reduction of economic cost to persons who are required to comply with the proposed section will be the same as the fiscal implication for small businesses.

Comments on the proposal may be submitted to Jack Evins, Deputy Insurance Commissioner for Licensing, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 3.75, §8, which provides that the State Board of Insurance may establish such rules, regulations, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of provisions of the Insurance Code concerning licensing and regulation of variable contract agents.

§19.703. Application for License.

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

(d) The board shall issue a license to a corporation if the board [it] finds:

(1) that the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act, has [having] its principal place of business in the state of Texas, and has [having] as one of its purposes the authority to act as agent under this subchapter;

(2) that every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this subchapter, or that every officer and director of the corporation is individually licensed under this subchapter, that the corporation is a wholly owned subsidiary of a parent corporation that is licensed under this subchapter, and that every shareholder of the parent corporation is individually licensed under this subchapter; and

(3) that such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as under this subchapter. The term "customer" as used in this paragraph shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a variable annuity or variable life contract or from whom such corporation accepts an application for such contract. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy insuring such corporation against er-

rors and omissions in at least the sum of \$100,000 with no more than a \$10,000 [\$5,000] deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the board's approval; or

(B)-(C) (No change.)

(e)-(m) (No change.)

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

Issued in Austin, Texas, on March 31, 1989.

TRD-8902899 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

Chapter 21. Trade Practices

Subchapter B. Insurance Advertising, and Certain Trade Practices and Solicitation

• 28 TAC §21.102, §21.104

The State Board of Insurance proposes amendments to §21.102 and §21.104, concerning insurance advertising and certain trade practices and solicitation. The proposed amendment to §21.102 amends the definition of the term "advertisement" to include lead card solicitations and other communications with the public which result or are intended to result in the sale or solicitation of a policy. The proposed amendment to §21.102 is necessary to subject lead card generators to the rules and regulations of the State Board of Insurance. The proposed amendment to §21.104 requires, with listed exceptions, that insurance advertisements be disseminated by an entity or person licensed by the State Board of Insurance. The proposed amendment to §21.104 is necessary to ensure that all insurance advertisements are disseminated by a licensed entity or person.

Diane Moellenberg, assistant director, advertising, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Moellenberg also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the reduction of misleading and deceptive advertisements. There is no anticipated economic cost to individuals who are required to comply

with the sections as proposed.

Comments on the proposal may be submitted to Diane Moellenberg, Assistant Director, Advertising, Division 431, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendments are proposed under the Insurance Code, Article 21.21, §13, which authorizes the State Board of Insurance to promulgate reasonable rules and regulations as are necessary in the accomplishment of the purposes of Article 21.21, which prohibits unfair competition and unfair practices.

§21.102. Scope: For the Purpose of These Sections.

(a) "Advertisement" includes, but is not limited to:

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

(5) material included with a policy when the policy is delivered and materials used in the solicitation of renewals and reinstatements, except those reinstatements provided for in the policy; and[.]

(6) lead card solicitations which are hereby defined as communications distributed to the public which, regardless of form, content, or stated purpose, result or are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are to be used to solicit residents of this state for the purchase of a policy, as defined in subsection (c) of this section; and

(7) any other communication directly or indirectly related to a policy, as defined in subsection (c) of this section, and intended to result in the eventual sale or solicitation of a policy.

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

§21.104. Requirement of Identification of Policy or Insurer.

(a)-(h) (No change.)

(i) All advertisements regarding a policy, as defined in §21.102(3) of this title (relating to Scope: for the Purpose of These Sections), must be mailed from and returned to an entity or person licensed to solicit insurance. This subsection does not apply to:

(1) radio and television broadcasts;

(2) magazine, periodical, and newspaper advertisements;

(3) telephone directory advertisements;

(4) group master contract holders when distributing information to its current members regarding the master policy; or,

(5) any group soliciting for membership when insurance is incidental to membership solicitation so long as references to insurance benefits are treated with the same prominence as other benefits contained in the solicitation, such insurance benefits are not the sole or primary inducement to join the group, and application for membership precedes application for insurance.

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 March 30, 1989.

TRD-8902944 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

Subchapter H. Unfair Discrimination

• 28 TAC §21.702

The State Board of Insurance proposes an amendment to §21.702, concerning unfairly discriminatory acts or practices. The proposed amendment to §21.702 identifies the acts and practices in professional liability insurance which constitute unfair discrimination between physicians of the same class. The proposed amendment to §21.702 is necessary to ensure that professional liability insurance is not denied, discontinued, increased, or limited solely because of a physician's participation in a program sponsored by the State Department of Health or because of the economic status of the patients or clients served.

Tony Schrader, director, market conduct, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Schrader also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the reduction of unfairly discriminatory acts or practices with respect to professional liability insurance. There is no anticipated economic cost to individuals who are required to comply with the section* as proposed.

Comments on the proposal may be submitted to Tony Schrader, Director, Market Conduct, Division 430, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 21.21, §13, which authorizes the State Board of Insurance to promulgate reasonable rules and regulations as are necessary in the accomplishment of

the purposes of Article 21. 21, which prohibits unfair competition and unfair practices.

§21.702. Unfairly Discriminatory Acts or Practices.

(a) The following are hereby identified as acts or practices in life and health insurance which constitute unfair discrimination between individuals of the same class: refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience; notwithstanding any other part of this section, refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. This subsection [section] does not specify a complete list of acts or practices in life and health insurance which constitute unfair discrimination between individuals of the same class.

(b) The following are hereby identified as acts or practices in professional liability insurance which constitute unfair discrimination between physicians, as defined in the Insurance Code, Article 5.15-1, §2, of the same class: refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of coverage available to a physician, or charging a different rate for the same coverage solely because of participation in a program sponsored by the State Department of Health or because of the economic status of the patients or clients served, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience. This subsection does not specify a complete list of acts or practices in professional liability insurance which constitute unfair discrimination between physicians of the same class.

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 March 30, 1989.

TRD-8902943
Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, Examinations, and Assessments

• 28 TAC §25.713

The State Board of Insurance proposes new §25.713, concerning assessment of insurance premium finance companies in 1989. Section 25.713 was adopted on an emergency basis and became effective in December 21, 1988. Notice of the emergency adoption of §25.713 appeared in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6383). An amendment to §25.713 was adopted on an emergency basis and became effective on February 3, 1989. Notice of the emergency adoption of the amendment to §25.713 appeared in the February 10, 1989, issue of the *Texas Register* (14 TexReg 737). This section is necessary to provide a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under new §25.713, the board levies a rate of assessment for 1989 to cover general administrative expense and collects from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1988 calendar year.

Nicholas Murphy, chief clerk, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The fiscal implications for small businesses will be the same as the anticipated economic cost to all persons who are required to comply with the section as proposed. Except that a minimum overhead assessment of \$250 shall be levied and collected, there is no difference in the rate of assessment between small and large businesses.

Mr. Murphy 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 is the adoption of a rate of assessment to cover the general administrative expense attributable to the administrative regulation of insurance premium finance companies. The anticipated economic cost to persons who are required to comply with the proposal will be payment of the assessment at the rate specified.

Comments on the proposal may be submitted to Nicholas Murphy, Division Code 0110, Chief Clerk, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 24.6, §(c), which provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies; and Article 24.09, which authorizes the State Board of Insurance to adopt

and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies.

§25.713. General Administrative Expense Assessment, 1989. On or before April 1, 1989, each insurance premium finance company holding a license issued by the State Board of Insurance under the Insurance Code, Chapter 24, shall pay to the Texas State Board of Insurance an overhead charge which the board shall assess to cover the general administrative expense attributable to the regulation of insurance premium finance companies. Payment shall be by check, which shall be filed with the report required by the Insurance Code, Article 24.10(b), at the office of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assessment to cover general administrative expense shall be computed and paid as follows.

(1) Payment shall be in the amount of 0.00487 of 1.0% of the total loan dollar volume of the company of the calendar year 1988.

(2) Should the overhead charge, as computed under paragraph (1) of this section, produce an overhead assessment of less than \$250, a minimum overhead assessment of \$250 shall be levied and collected.

(3) The overhead assessments are to be based on the total loan dollar volume which the insurance premium finance company has reported to the board, except where there has been an understating of total loan dollar volume.

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 March 31, 1989.

TRD-8902939
Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 8, 1989

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 297. Water Rights, Substantive

The Texas Water Commission proposes amendments to §297.1 and §297.45, concerning water rights, substantive. The changes proposed in §297.1, concerning definitions, include modifying the definition of municipal use and adding a definition for reclaimed water. The change proposed in

§297.45(a), concerning return and surplus waters, is to clarify the water rights associated with return and surplus waters. These changes are proposed in coordination with the proposal of new Chapter 310, concerning use of reclaimed water. The agency is proposing the section in an effort to encourage the substitution of reclaimed water in place of potable water where appropriate. The use of reclaimed water will promote conservation of existing natural resources and may provide a less expensive way for water suppliers to meet water demands.

An additional change has been made to §297.45. Subsection (a) has been simplified to indicate that all uses of water must be authorized in the water right permit. Again, this change is made to complement the proposed new Chapter 310.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Bourdeau also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the conservation of water. Current water usage will be maintained utilizing water of lesser quality and thereby extending valuable potable waters. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Tom Bohl, Senior Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069, for 30 days following the date of this publication.

Subchapter A. Definitions

• 31 TAC §297.1

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§297.1. Definitions. The following words and terms, when used in this chapter and in Chapter 295 of this title (relating to Water Rights, Procedural), shall have the following meanings, unless the context clearly indicates otherwise.

Municipal use—The use of potable [treated] water within a community or [without] a municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways, or the use of reclaimed water in lieu of potable water for the above purposes or [whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes

the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes] the application of municipal sewage effluent on [upon] land [sites,] pursuant to a Texas Water Code, Chapter 26, permit [,] where:

(A) the application site is land owned or leased by the Texas Water Code, Chapter 26 permit holder [primary purpose of the application is the treatment and/or necessary disposal of such effluent]; or

(B) the application site is within an area for which the commission has adopted a no discharge rule. [a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

[(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge rule.]

Reclaimed water—Domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use.

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 March 29, 1989.

TRD-8902808 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 5, 1989

For further information, please call: (512) 463-8087

Subchapter E. Issuance and Conditions of Water Permit or Certificate of Adjudication

• 31 TAC §297.45

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§297.45. Return and Surplus Waters.

(a) A right to take and use water is limited to the extent and purposes authorized in the water right. [stated in the permit. For example, if an entity has used state water permitted for a municipal use, it shall not use or sell the effluent for any other purpose without first obtaining a permit from the commission; however, the application of municipal sewage effluent upon land sites is considered a municipal use of water, when conducted pursuant to a Texas Water Code, Chapter 26, permit, where:

[(1) the primary purpose of the application is the treatment and/or necessary disposal of such effluent;

[(2) the application site is a park, parkway, golf course, or other landscape area owned by the owner of the permitted sewerage system; or

[(3) within an area for which the commission has adopted a no-discharge rule.]

(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 March 29, 1989.

TRD-8902807 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 5, 1989

For further information, please call: (512) 463-8087

Chapter 305. Consolidated Permits

Subchapter C. Application for Permit

• 31 TAC §305.48

The Texas Water Commission proposes an amendment to §305.48, concerning the contents of applications for wastewater discharge permits. Specifically, an additional requirement for information to be submitted with an application is included. The information sought is directed at permittees and/or applicants of domestic wastewater treatment facilities with a permitted effluent flow equal to or greater than 500,000 gallons per day. The commission is proposing to require these permittees and/or applicants to evaluate the use of reclaimed water in place of potable water where appropriate. Reclaimed water is defined in the section as domestic wastewater that is under the direct control of the wastewater treatment plant owner/operator which has been treated to a quality suitable for a beneficial use or a controlled use that would not otherwise occur. The permittee and/or applicant would perform a feasibility study for reclaimed water substitution and submit the results of that study with the per-

mit application. The reason for requiring the study is to initiate community awareness of uses of reclaimed water to conserve existing natural resources.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for local government as a result of enforcing or administering the section.

The estimated additional costs for local government for the first five-year period the proposed section is in effect will be \$388,503 for fiscal years 1989 and 1990 and \$388,502 for fiscal years 1991-1993. There will be no fiscal implications for state government or small businesses as a result of enforcing or administering the section.

Mr. Bourdeau also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the conservation of water. Current water usage will be maintained utilizing water of lesser quality and thereby extending valuable potable waters.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be \$4,119 for fiscal years 1989 and 1990; \$4,118 for fiscal years 1991-1993.

Comments on the proposal may be submitted to Kevin McCalla, Senior Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087-3087, Austin, Texas 78711, (512) 463-8087, for 30 days following the date of this publication.

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§305.48. Additional Contents of Applications for Wastewater Discharge Permits. The following shall be included in an application for a wastewater discharge permit.

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

(4) Permittees and/or permit applicants of domestic wastewater treatment facilities with a permitted daily average effluent flow equal to or greater than 500,000 gallons per day shall investigate the possibility of substituting reclaimed water for potable water where such substitution would be both appropriate and cost effective. Reclaimed water is domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use or a controlled use that would not otherwise occur. This cost study shall be submitted to the executive director with an application for a new, amended, or renewal permit. At a minimum, permittees shall:

(A) conduct a water supply and demand assessment for the area served or proposed to be served;

(B) inventory potential areas where reclaimed water may be appropriately substituted for potable water;

(C) inventory potential users of reclaimed water;

(D) determined the market for reclaimed water and the conditions necessary to serve that market (eg. quantity, quality, selling price, distribution system); and

(E) develop a preliminary cost-benefit analysis for the treatment and use of reclaimed water comparing with the continued use of potable water, water supply augmentation, water conservation, and/or costs of treatment and disposal of treated wastewater.

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 March 29, 1989.

TRD-8902806

Jim Haley
Legal Division
Texas Water Commission

Earliest possible date of adoption: May 5, 1989

For further information, please call: (512) 463-8087

Chapter 310. Use of Reclaimed Water

Subchapter A. Use of Reclaimed Water

• 31 TAC §§310.1-310.17

The Texas Water Commission proposes new §§310.1-310.17, concerning the use of reclaimed water in substitution for potable water where appropriate. Specifically, this section defines terms associated with the activity of reclaimed water usage, explains the commission's purpose in establishing the sections, explains the scope of the sections, establishes water quality criteria for the reclaimed water for various uses, establishes certain other health and safety requirements for utilization of reclaimed water, and establishes requirements for the transfer of reclaimed water from a provider to a user. These sections set up a notification system whereby the executive director will review a water provider and user's plan for reclaimed water use for compliance with the requirement of the sections prior to the use of such water. Upon the executive director's approval of the reclaimed water use plan, the provider and user may proceed with the plan, in accordance with the sections, without the need

for a permit or permit amendment.

The commission believes that reclaimed water may be used safely and beneficially for many purposes, some of which include irrigation of vegetation, source of water for landscape impoundments, restricted recreational impoundments, or ornamental fountains, and commercial and industrial uses such as cooling water. The use of reclaimed water may have an impact on existing water rights; therefore, as the executive director reviews proposed plans, a review will be made by the staff to determine if other authorizations are needed prior to implementation of the reclaimed water plan.

The 70th Legislature passed legislation which was signed by the governor amending of the Texas Water Code, Chapter 26, Section 26.0311 requires the commission to adopt sections concerning the use of greywater. The sections proposed here include the use of greywater.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the sections as proposed are in effect, there will be no direct fiscal implications on state, local governments or small businesses as a result of enforcing or administering the sections.

Mr. Bourdeau has also determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be the conservation of water. Current water usage will be maintained utilizing water of lesser quality and thereby extending valuable potable waters. A cost estimate is not available because a provider is not required to use reclaimed water. Each individual system would be different.

Comments on the proposal may be submitted to Kevin McCalla, Senior Staff Attorney, Legal Division, Texas Water Commission, P. O. Box 13087-3087, Austin, Texas 78711, (512) 463-8087. Comments will be received for 30 days following the date of this publication.

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, 5.120, and 26.0311, which provide the commission with the authority to promulgate sections as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

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

BOD5—Five day biochemical oxygen demand.

Blackwater—Wastewater from toilet, latrine, and aqua privy flushing and sinks used for food preparation or disposal of chemical or chemical biological ingredients.

CFU—Colony forming units.

Edwards Aquifer—That portion of an arcuate belt of porous, water bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties (See Chapter 313 of this title (relating to

Edwards Aquifer)).

Food crop—Any crops intended for direct human consumption.

Greywater—Wastewater from clothes washing machines, showers, bathtubs, handwashing lavatories and sinks that are not used for disposal of chemical or chemical-biological ingredients.

1—Liter.

Landscape impoundment—Body of reclaimed water which is used for aesthetic enjoyment or which otherwise serves a function not intended to include public contact.

mg/l—Milligram per liter.

NTU—Nephelometric turbidity units.

Recharge zone—Generally, that area where the Edwards Aquifer and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise defined. The recharge zone is specifically that geological area delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 313 of this title (relating to Edwards Aquifer)).

Reclaimed water—Domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use.

Restricted landscaped area—land which has had its plant cover modified and access to which may be controlled in some manner. Access may be controlled by either legal means (i.e. state or city ordinance) or controlled by some type of physical barrier (i.e. fence or wall). Example of such areas are golf courses, cemeteries, and roadway right-a-ways.

Restricted recreational impoundment—Body of reclaimed water in which recreation is limited to fishing, boating, and other non-body contact water recreation activities.

Spray irrigation—Application of reclaimed water to crops by spraying it from orifices in piping.

Surface irrigation—Application of reclaimed water by means other than spraying such that contact between the edible portion of any food crop and reclaimed water is prevented.

Wastewater—Water containing waste including greywater, blackwater, or water contaminated by waste contact, including process-generated and contaminated rainfall runoff.

Unrestricted landscaped area—land which has had its plant cover modified and access to which is uncontrolled. Examples of such areas are parks, school yards, greenbelts, and residences.

User—person who utilizes treated wastewater for agricultural, domestic, commercial, or industrial purposes but does not originally treat the domestic wastewater.

§310.2. Purpose and Scope.

(a) The purpose of this chapter is to establish quality criteria, design and operational requirements for use of reclaimed water which may be substituted for potable water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and ground water, to ensure the protection of public health, to protect ground and surface waters, and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water in separate chapters. This section does not modify those definitions; however, the term reclaimed water is limited in scope for the purpose of this section as defined in §310.1 of this title (relating to Definitions). Approval by the executive director of a reclaimed water use project does not affect any changes of existing water rights. If water rights are an issue to a reclaimed water use project, a separate authorization from the commission must be obtained by the reclaimed water provider and/or user, as appropriate.

§310.3. Applicability. This chapter applies to both the reclaimed water provider and the reclaimed water user who does not own or operate a domestic wastewater treatment system. With respect to the reclamation of greywater, this section applies to greywater generated by facilities not under the jurisdiction of the Texas Department of Health (i.e. those facilities that produce more than 5,000 gallons of waste per day when the volume of blackwater and greywater is summed).

§310.4. Notification.

(a) Unless otherwise exempted by in this chapter, the reclaimed water provider and user shall notify the executive director and obtain approval of the intended use of the reclaimed water prior to use of reclaimed water. The notification shall include a description of the intended use of the reclaimed water, including quantity, quality, origin, location of intended use and clearly indicate the means for compliance with this chapter. An operation and maintenance plan shall be included in the notification and shall contain, as a minimum, the following:

- (1) a copy of a contract between the user and provider;
- (2) labelling and separation distances of reclaimed water distribution lines

from potable water lines to prevent cross-connection;

(3) measures to prevent unauthorized access to reclaimed water facilities (i.e. secured valves);

(4) reclaimed water monitoring procedures;

(5) scheduling of reclaimed water use to minimize the risk of inadvertent human exposure;

(6) routine maintenance schedules;

(7) worker training and safety; and

(8) contingency plans for system failure or upset.

(b) If the reclaimed water provider plans to distribute reclaimed water via a separate distribution line to residences or other entities for purposes of yard watering, then only the provider need notify the executive director and obtain approval prior to distribution of the water. The notification shall include the same items listed in subsection (a) of this section.

(c) If effluent is to be irrigated within the Edwards Aquifer recharge zone, plans and specifications for the disposal system must be submitted to the executive director for review and approval prior to construction of the facility in accordance with Chapter 313 of this title (relating to Edwards Aquifer.)

(d) Notification and approval for use of reclaimed water is required without consideration of the origin of the water (i.e. surface or ground water).

(e) Any change in an approved plan for use of reclaimed water must be approved by the executive director.

§310.5. Permits Required.

(a) Prior to discharging any reclaimed water to the waters in the state, the provider or user shall obtain a permit from the commission.

(b) The executive director may, if conditions warrant, require a reclaimed water user to apply for and obtain a permit to utilize reclaimed water.

(c) Unless otherwise specified in this chapter, all owners and/or operators of a wastewater treatment facility are required to apply for and obtain a permit from the commission which authorizes treatment of domestic wastewater and disposal of the resulting treated water.

(d) The treatment and use of greywater does not require a permit from the commission if the treated greywater (reclaimed water) is used by the owner/operator of the treatment facility and the user satisfies the requirements of this chapter.

(e) A reclaimed water user who ac-

cepts effluent and provides additional treatment for a more restrictive use must apply for and obtained a permit from the commission prior to engaging in such activity.

(f) No person may receive reclaimed water and transfer such water to another person without first obtaining a permit from the commission.

§310.6. General Requirements.

(a) No wastewater treatment plant operator shall transfer to a user reclaimed water without first notifying the commission as required in §310.04 of this title (relating to Notification).

(b) Irrigation with untreated wastewater is prohibited.

(c) Spray irrigation of reclaimed water on food crops is prohibited.

(d) There shall be no nuisance conditions resulting from the use and/or storage of reclaimed water.

(e) There shall be no off-site discharge, either airborne or surface runoff, of reclaimed water from the user's property except to a sanitary sewage collection system unless the reclaimed water user applies for and obtains a permit from the commission which authorizes discharge of the water.

(f) Reclaimed water shall be utilized in a way that does not threaten ground water quality.

(g) Signs in both English and Spanish shall be posted at storage areas, hose bibs and faucets reading "Reclaimed Water, Do Not Drink" or similar warnings. Alternately, the area may be secured to prevent access by the public.

(h) Reclaimed water piping shall be separated from potable water piping when trenched by a distance of at least 10 feet

and reclaimed water piping may not be laid at a higher elevation than potable water piping. Pipes shall be color coded, buried with colored tape or otherwise suitably marked to indicate non-potable water.

(i) The design of distribution systems which will convey reclaimed water to a user shall be approved by the executive director. Materials shall be submitted for approval by the executive director in accordance with the Texas Engineering Practice Act (Texas Civil Statutes, Article 3271a).

§310.7. Storage Requirements for Reclaimed Water.

(a) Unless the reclaimed water provider or user, as appropriate, submits soil and geologic data to demonstrate containment of the effluent, which is reviewed by the executive director, and a specific exemption is obtained from the executive director, reclaimed water holding ponds shall conform to the following requirements.

(1) All ponds, whether constructed of earthen or other impervious materials, shall be designed and constructed so as to prevent groundwater contamination. Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24 inches thick, compacted in lifts no greater than six inches and compacted to 95% of standard proctor density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater. Alternate linings may be utilized for a pond lining as long as they are constructed with a 12 inch thick soil base free of foreign materials such as paper, brush, trees, and large rocks and the alternate lining material has a permeability less than or equal to 1×10^{-7} cm/sec. Synthetic membrane linings shall

have a minimum thickness of 20 mils with a leak detection system. Certification shall be furnished by a Texas registered professional engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities.

(2) Soils used in the pond embankment walls shall be free of foreign material such as paper, brush, trees, and large rocks. The embankment walls shall have a top width of at least five feet. Interior and exterior slope of the embankment walls shall be no steeper than one foot vertical to three feet horizontal. The embankment walls must be constructed of compacted material, at least 12 inches thick, compacted in lifts no greater than six inches and compacted to 95% of standard proctor density. Soil embankment material must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater. All embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion control mats and water seals shall be installed on all piping penetrating the embankments.

(b) Storm water may be directed to storage/holding ponds; however, the pond shall not be allowed to overflow.

(c) Reclaimed water may be stored in leak proof tanks.

§310.8. Irrigation Using Reclaimed Water. The following conditions apply to the use of reclaimed water for agricultural purposes.

(1) At a minimum, the reclaimed water provider shall only transfer reclaimed water of the following quality as described for each type of specific use and the user shall assure that the water is at least of the same quality prior to use:

Irrigation of food crops:

Reclaimed water on a 30-day average shall have a quality of

BOD ₅ (non-oxidation pond system)	10 mg/l
(oxidation pond system)	30 mg/l
Turbidity	1 NTU
Fecal Coliform (geometric mean)	2.2/100 ml
(not to exceed)	25CFU/100 ml

Irrigation of fodder, fiber and seed crops:

Reclaimed water on a 30-day average shall have a quality of

BOD₅ (non-oxidation pond system) 30 mg/l
(oxidation pond system) 30 mg/l

Irrigation of pastures for milking animals:

Reclaimed water on a 30-day average shall have a
quality of

BOD₅ (non-oxidation pond system) 20 mg/l
(oxidation pond system) 30 mg/l

Turbidity 5 NTU

Fecal Coliform (not to exceed) 25CFU/100 ml

Irrigation of landscaped areas

For unrestricted landscaped areas, reclaimed
water on a 30-day average shall have a
quality of

BOD₅ 5 mg/l

Turbidity 1 NTU

Fecal Coliform (not to exceed) 25CFU/100 ml

For restricted landscaped areas, reclaimed
water on a 30-day average shall have a
quality of

BOD₅ (non-oxidation pond system) 20 mg/l

(oxidation pond system) 30 mg/l

Turbidity 5 NTU

Fecal Coliform (not to exceed) 800CFU/100 ml

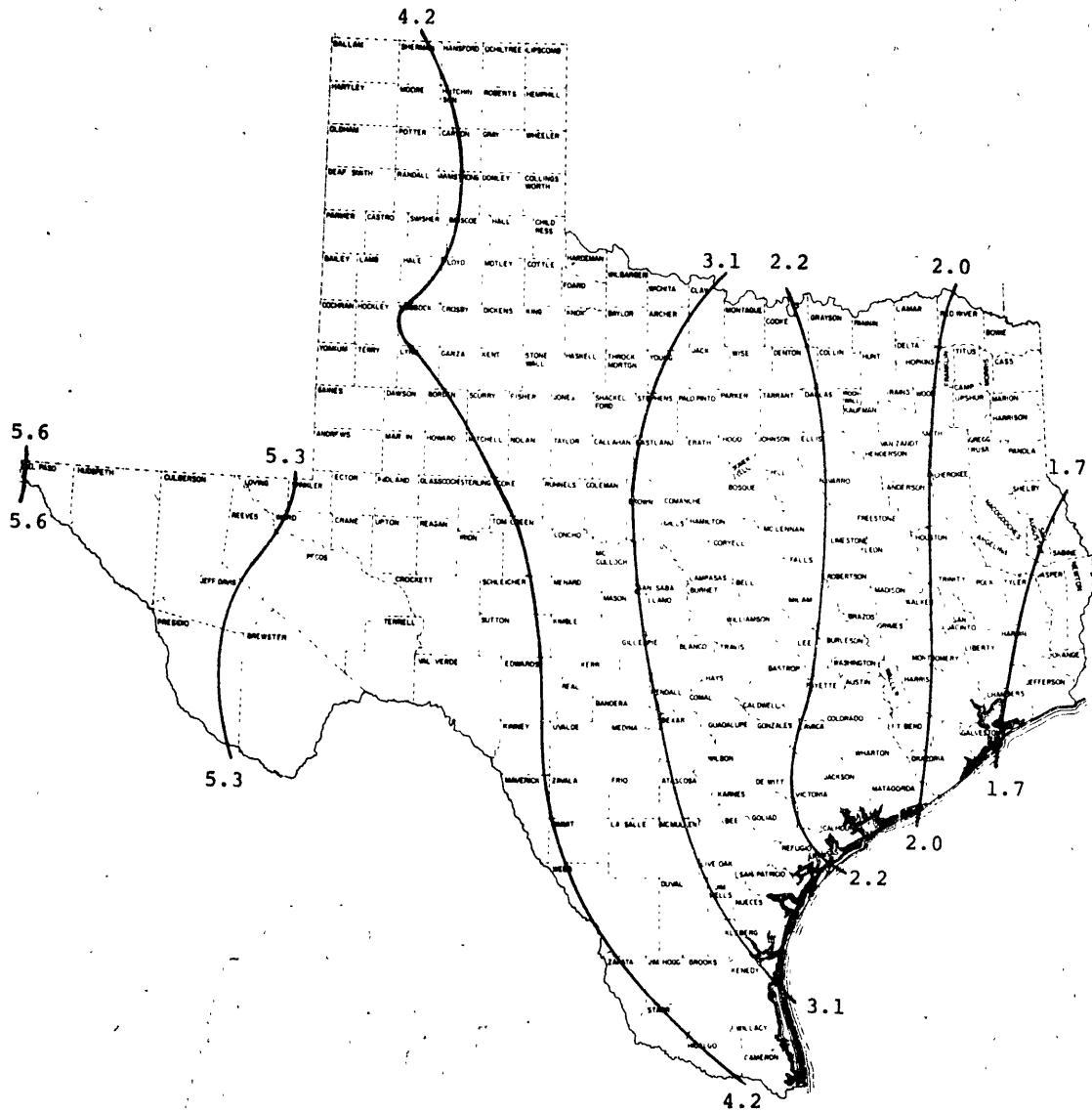
(2) Reclaimed water transferred from the provider shall be chlorinated to a chlorine concentration of 1 mg/l after 20 minutes detention or disinfected in another manner approved by the executive director. If the user stores the reclaimed water prior to use on food crops or landscaped areas, then the water must be chlorinated again to provide a trace chlorine concentration or disinfected in some other manner approved by the executive director.

(3) Fodder, fiber, and seed crops may not be harvested within 30 days of application of reclaimed water.

(4) The application rates for irrigation of food crops, pastures for milking animals, and landscaped areas shall be determined by one of the following methods.

(A) The maximum application rate for irrigation shall be determined by utilizing the map as shown in Figure 1 of this paragraph. Figure 1 is based on the assumption that the land is arable and seeded in perennial pasture and an average rainfall year. Any project based upon an application rate in excess of the value found in Figure 1 of this paragraph must provide a water balance. The reclaimed water user is responsible for providing equipment to determine application rates; or

Figure 1
 Maximum Application Rates For
 Land Disposal of Treated Effluent in Texas
 (Acre-Feet/Acre/Year)



(B) the reclaimed water user may determine the application rate based upon a detailed water balance. The water balance should generally follow the example development shown in Table 1 of this paragraph. Precipitation inputs to the water

balance shall utilize the average monthly precipitation based on past rainfall records. The consumptive use requirements (evapotranspiration losses) of the crop system shall be developed on a monthly basis. The method of determining the consumptive use requirement shall be documented as a part of the water balance study. A leaching re-

quirement, calculated as shown in Table 1 of this paragraph shall be included in the water balance study when the total dissolved solids concentration of the reclaimed water presents the potential for developing excessive soil salinity buildup due to the long term operation of the irrigation system.

TABLE 1
WATER BALANCE EXAMPLE
Net Irrigation (Effluent) Need for Austin, Texas for Perennial Pasture
(All Units are Inches of Water per Acre of Irrigated Area)

Month (1)	Average Precipitation (2)	Average Runoff (3)	Average Infiltrated Rainfall (4)	Evapo- transpi- ration (5)	Required Leaching (6)	Total Water Needs (5)+(6) (7)	Effluent Needed in Root Zone (7)-(4) (8)	Evapo- transpi- ration from Reservoir Surface (9)	Effluent to be Applied to Land (8)/K (10)	Consumption from Reservoir (9)+(10) (11)
	a	b	c	d	e	f				
Jan.	1.88	0.34	1.54	0.8	0.00	0.80	0.00	0.087	0.00	0.087
Feb.	3.09	0.56	2.53	1.2	0.00	1.20	0.00	-0.044	0.00	-0.044
Mar.	1.89	0.34	1.55	2.8	0.21	3.01	1.46	0.41	1.72	2.13
Apr.	3.49	0.63	2.86	3.4	0.09	3.49	0.63	0.27	0.74	1.01
May	3.97	0.72	3.25	6.1	0.50	6.60	3.35	0.34	3.94	4.28
June	3.13	0.57	2.56	6.5	0.69	7.19	4.63	0.72	5.45	6.17
July	1.88	0.34	1.54	6.7	0.90	7.60	6.06	1.10	7.13	8.23
Aug.	2.20	0.40	1.80	4.6	0.49	5.09	3.29	1.01	3.87	4.88
Sept.	3.68	0.66	3.02	5.1	0.36	5.46	2.44	0.40	2.87	3.27
Oct.	3.02	0.55	2.47	4.1	0.29	4.39	1.92	0.69	2.26	2.95
Nov.	2.04	0.37	1.67	2.1	0.08	2.18	0.51	0.02	0.60	0.62
Dec.	2.22	0.40	1.82	1.0	0.00	1.00	0.00	0.029	0.00	0.029
	32.49	5.88	26.61	44.4	3.61	48.01	24.29	5.032	28.58	33.61

Table 1 Footnotes

- a Runoff should be determined by an acceptable method such as the Soil Conservation Service Method. Individual storms should be selected from rainfall data for a near average year to obtain an average annual runoff. This annual value is then distributed proportionally to average monthly rainfall to obtain monthly runoff values.
- b Suggested source of values is from "Bulletin 6019, Consumptive Use of Water by Major Crops in Texas", Texas Board of Water Engineers.
- c In low rainfall areas this is the required leaching to avoid salinity build-up in the soil, where:

$$L = \frac{Ce}{Cl - Ce} (E - Ri)$$

Ce = Electrical conductivity
of effluent

Ri = Infiltrated rainfall

E = Evapotranspiration

Cl = Maximum allowable electrical conductivity of soil solution
(Table 3)

- d Net evaporation from reservoir surface. For the purpose of calculation, an assumption must be made as to the ratio of irrigated land area to reservoir surface area. For this example problem, the necessary reservoir area was assumed to be 17% of the irrigated area. If, after all calculations are made, the reservoir dimensions do not seem reasonable, then a new assumption must be made and the calculations repeated. Values in column (9) are adjusted to be inches per irrigated acre.
- e K is the irrigation efficiency which for this example is taken to be 0.85.
- f The total of this column together with the expected annual volume of effluent will determine the acreage of irrigated land required.

(5) The irrigation site must be maintained with a vegetative cover or be under cultivation during times when reclaimed water is being applied.

(6) The irrigation practices shall be designed so as to prevent incidental ponding or standing water except where local farming conditions and the accepted irrigation delivery systems and cropping patterns are such that, as an unavoidable consequence of such conditions, systems, and patterns, there will be standing water.

(7) Irrigation shall be achieved when the area is not in use.

(8) Irrigation application rates and application times shall be developed so as to minimize wet grass conditions in unrestricted landscaped areas during the periods the area could be in use.

(9) Reclaimed water applied to land with public access must be re-disinfected following storage and prior to use. Pipeline delivery of reclaimed water to a user does not constitute storage.

(10) Irrigation spray shall not reach any privately-owned premises or public drinking fountains.

(11) There shall be no application of effluent when the ground is saturated or frozen.

(12) Food crops shall not be spray irrigated.

(13) Tailwater water controls shall be constructed to preclude discharge of stormwater runoff from irrigation sites used for production of food crops, grazing milking animals, and production of fodder, fiber and seed crops.

(14) If irrigation water is stored prior to application, provision must be made to provide additional disinfection to meet the specified criteria for the designated use. Such disinfection must receive executive director approval.

(15) Vandal proof distribution systems for delivery to and at residences with no attached handles is required.

§310.9. Landscape Impoundment, Restricted Recreational Impoundments, or Ornamental Fountains.

(a) Reclaimed water may be used for a source of water supply in a landscape impoundment, restricted recreational impoundment, or ornamental fountain if the quality of the water transferred from the provider is at a minimum:

BOD ₅	10 mg/l
Turbidity	1 NTU
Fecal Coliform (not to exceed)	25CFU/100 ml

(b) The landscape impoundment, restricted recreational impoundment, or ornamental fountain shall not discharge into surface water in the state.

(c) Signs in both English and Spanish shall be posted stating that swimming and drinking the water is prohibited.

(d) Ornamental fountains shall be designed to minimize drift of water spray outside of the fountain.

§310.10. Commercial and Industrial Use of Reclaimed Water.

(a) Reclaimed water may be utilized in place of potable water if the quality of the water transferred from the provider is at a minimum:

BOD ₅ (non-oxidation pond system)	20 mg/l
(oxidation pond system)	30 mg/l
Turbidity	5 NTU
Fecal Coliform (not to exceed)	200CFU/100 ml

(b) Usage of reclaimed water shall not result in drift of spray to areas outside the industrial or commercial area or to areas where the public would be exposed.

(c) Excess and/or used reclaimed water must be collected and returned to a wastewater treatment system or a wastewater treatment or collection system.

sampling and analysis frequency for reclaimed water is as follows:

(1) distribution for irrigation of food crops: once per week;

(2) distribution for irrigation of fodder, fiber, and seed crops: once per month;

(3) distribution for irrigation of pastures for milking animals: once per two weeks;

(4) distribution for irrigation of unrestricted landscaped areas: once per week;

(5) distribution for irrigation of restricted landscaped areas: once per month;

(6) distribution for landscape impoundment water, restricted recreational impoundment water, or ornamental fountain water: once per week;

(7) distribution for industrial or commercial uses: once per month.

§310.12. Recordkeeping and Reporting. The reclaimed water provider and user shall maintain records on site for a period of three years.

(1) Provider requirements

(A) Records to be maintained include:

(i) copies of notifications

§310.11. Sampling and Analysis. The reclaimed water provider shall sample the reclaimed water prior to distribution to user to assure that the water quality is in accord with the intended contracted use. Analytical methods shall be in accord with those specified in Chapter 319 of this title (relating to Monitoring and Reporting). The minimum

made to the commission concerning reclaimed water projects;

(ii) copies of contracts made with each reclaimed water user. This does not include reclaimed water users at residences which are on a dual distribution line for water;

(iii) records of volume of water delivered to each reclaimed water user per delivery. This does not apply to reclaimed water users at residences which are on a dual distribution system;

(iv) Reclaimed water quality analyses.

(B) The provider shall report to the commission on a monthly basis the following information. Such reports are due to the commission by the 25th day of the month following the reporting period.

(i) volume of reclaimed water delivered to a user; and

(ii) use of reclaimed water listed according to each user; and

(iii) quality of reclaimed water delivered to user reported as a monthly average for each quality criteria except those listed as not to exceed values which shall be reported as individual analyses.

(2) The user, except for residences and other entities distributed reclaimed water for yard use, shall maintain records of the date and volume of water used. The records shall be made available to the provider and the executive director upon request.

§310.13. Transfer of Reclaimed Water. Reclaimed water transferred from a provider to a user shall be done so on a demand only basis. This means that the reclaimed water user may refuse delivery of such water. All reclaimed water transferred to a user must be of at least the treatment quality for the use specified in §310.8 of this title (relating to Irrigation Using Reclaimed Water), §310.9 of this title (relating to Landscape Impoundment, Restricted Recreational Impoundment, or Ornamental Fountains) and §310.10 of this title (relating to Commercial and Industrial Use of Reclaimed Water). Transfer shall be accomplished via pipes, tank trucks or constructed channel.

§310.14. General prohibitions.

(a) Land used for irrigation with reclaimed water shall not be located within the five-year floodplain.

(b) Storage facilities for retaining reclaimed water prior to use shall not be located within the five-year floodplain and shall be protected from the 100-year flood.

§310.15. Restrictions. This subchapter does not convey any property right and does not grant any exclusive privilege.

§310.16. Responsibilities and Contracts. The reclaimed water provider and user are responsible and liable for meeting the conditions of this chapter. The treatment plant owner will not be liable for misapplication of reclaimed water by users as provided in this section. Each party has, but is not limited to, the following responsibilities:

(1) The reclaimed water provider shall:

(A) construct reclaimed water distribution lines/systems in accordance with this chapter and in accords with approved plans and specifications;

(B) transfer reclaimed water of at least the minimum quality required by this chapter for the contractually specified use;

(C) sample and analyze the reclaimed water and report such analyses in accordance with this chapter;

(D) notify the executive director in writing within five days of obtaining knowledge of reclaimed water use not specified by the executive director reclaimed water use approval;

(E) not be responsible for the misuse of the reclaimed water by the user if transfer of such water ceases promptly upon knowledge of misuse regardless of contract provisions.

(2) The reclaimed water user:

(A) The user shall use the reclaimed water in accordance with this chapter; and

(B) The user must maintain and provide records as required by this chapter.

§310.17. Enforcement. If a provider and/or user fails to comply with the terms of this chapter, the executive director may take enforcement action provided by the Texas Water Code, §26.121.

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 March 30, 1989.

TRD-8902838

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 8, 1989

For further information, please call: (512) 463-8087

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.329

The Comptroller of Public Accounts proposes new §3.329, concerning enterprise projects. The new section sets the guidelines under which eligible enterprise projects may apply for refunds of sales tax. The new section is necessary because of the refund provisions enacted by the 70th Legislature, 1987, for enterprise projects in enterprise zones.

Jim Shear, 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. The section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Shear 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 from promulgation of the requirements enterprise projects must fulfill in order to receive refunds of sales taxes paid. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the new section may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

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

§3.329. Enterprise Projects.

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

(1) Enterprise project—A qualified business designated by the Texas Department of Commerce as an enterprise project under the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7) for a five-year period.

(2) New job—A job that meets the criteria of a new job as defined by the Texas Department of Commerce for enterprise projects.

(3) Period—The five-year period that the qualified business has been designated as a project unless the designation is revoked.

(4) Qualified employee—A person who works for a business that has been designated an enterprise project and who performs at least 50% of his service for the enterprise project within the enterprise zone.

(b) An enterprise project qualifies for a refund of state sales and use tax of \$2,000 for each new job the enterprise project creates for a qualified employee during its designation as an enterprise project.

(c) Only items of the type described in subsection (d) of this section which are purchased by the enterprise project during the designated period or 90 days prior to its designation may be considered in determining the amount of refund available to the project.

(d) Subject to the limitations of subsections (b), (c), (e), (f), and (g) of this section, a refund will be made based on state tax paid purchases of:

(1) machinery or equipment for use in the enterprise zone in which the enterprise project is located; or

(2) building materials for use in constructing, rehabilitating, or remodeling a structure in the enterprise zone in which the enterprise project is located.

(e) An enterprise project is not entitled to a refund of any taxes paid by a contractor under a lump-sum contract unless the contractor has received designation as the enterprise project.

(f) Sales and use taxes paid on taxable services are not eligible for refund. Taxes paid on materials purchased in conjunction with services will qualify for refund only when the charge for materials is separated from the charge for services and the amount of tax paid on materials is separated.

(g) Subject to the limitations prescribed in this section, refunds will be paid directly to the project.

(1) An enterprise project is eligible for a maximum refund of \$250,000 in each state fiscal year.

(A) The total amount refunded to an enterprise project may not exceed the total amount of state tax paid on qualifying purchases, or the amount determined by multiplying \$250,000 by the number of state fiscal years during the designated period of the enterprise project, whichever is less. The refund may not exceed \$2,000 for each new job created for a qualified employee.

(B) An enterprise project that qualifies for a refund which exceeds \$250,

000 during a state fiscal year may carry the excess to a subsequent year subject to the \$250,000 limitation in each year.

(C) Any carry-over or other eligible refunds must be applied for no later than the end of the next state fiscal year which follows the fiscal year in which the designation as an enterprise project expires or is removed by the Texas Department of Commerce.

(2) Claims for refund must be in writing and must indicate the period for which the refund is claimed and must reflect the written approval of the Texas Department of Commerce with respect to the number of new jobs created during the period. A claim for refund may be made annually or semiannually. Annual claims cover the period from September-August of each fiscal year. Semiannual claims cover the period from September-February and from March-August of each fiscal year.

(h) An enterprise project must retain records substantiating each claim for refund. The records must be verifiable by audit and include copies of invoices showing the item purchased, the date of purchase, amount of purchase, the amount of tax paid, and the identity of the seller. The records must also show that the machinery and equipment and building materials purchased are for use within the zone. Employment records must also be kept verifying the number of new jobs created.

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 April 3, 1989.

TRD-8902958 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 8, 1989

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

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**TITLE 37. PUBLIC
SAFETY AND
CORRECTIONS**
**Part VII. Texas
Commission on Law
Enforcement Officer
Standards and Education**
**Chapter 211. Administrative
Division**

Substantive Rules

• **37 TAC §211.67**

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §211.67, concerning advisory boards. Section 211.67, is a rewrite of an existing rule

governing advisory boards. The new section as proposed will provide a more structured set of operating procedures and a more detailed set of guidelines covering areas of responsibilities for the advisory boards, than is contained in the present section regarding advisory boards.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. McCully-Bonner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clear and concise set of procedures by which the advisory boards will operate. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The new section is proposed under the Texas Government Code, §415.010 and §415.031, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and provides a more structured set of operating procedures and a more detailed set of guidelines covering areas of responsibility for the advisory board.

§211.67. Advisory Boards.

(a) Each academy, school, or training course approved by the commission must establish and maintain an advisory board as required by law. To be established, this board must have at least three members who are appointed by the sponsoring organization. To be maintained, the active, appointed membership of the board must not fall below a quorum for more than 30 days.

(b) The board may have members who are law enforcement personnel. However one-third of the members must be public members having the same qualifications, found in the Government Code, §415.005, as any commissioner who is required by law to be a member of the general public. The chief administrator or head of the sponsoring organization and the designated training coordinator may only be ex-officio, non-voting members.

(c) The board must elect a chairman and may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least quarterly each calendar year. More frequent meetings may be called by its chairman, the training coordinator, or the person who appoints the board.

(e) A board will comply with the open meetings law and keep written min-

utes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon board approval.

(f) Board members will be appointed by the following authority, depending on the type of academy or training:

(1) for an agency academy, by the chief administrator;

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area; or

(4) for agreement training, by the chief administrator or head of the sponsoring organization.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) effectively discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered; and

(4) advise on the establishment of each course, the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention.

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the admission standards. The training entity is encouraged but not required to set admission and retention standards that meet or exceed the current minimum licensing standards set by the commission.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is January 1, 1990.

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 March 27, 1989.

TRD-8902812

Johanna McCully
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Earliest possible date of adoption: May 8, 1989

For further information, please call: (512) 834-9222

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• 37 TAC §211.68, §211.85

The Texas Commission on Law Enforcement Officer Standards and Education proposes amendments to §211.68, concerning the licensing of instructors, and §211.85, concerning the issuance of proficiency certificates. Section 211.68 will be amended by adding subsections (f) and (g) pertaining to the specialized licensing of instructors as drug recognition expert, and §211.85 will be amended by adding subsection (a)(6), drug recognition expert and by adding paragraphs (1)(2) pertaining to the requirements for certification as a drug recognition expert.

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

Ms. McCully-Bonner 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 result in more specialized training for peace officers, reserves, and jailers regarding drug recognition. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The amendments are proposed under the Texas Government Code, §§415.010, 415.031, 415.032, and 415.062, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and to license persons as qualified instructors. The amendments are also proposed under Texas Civil Statutes, Article 6252-13a, §4(a)(i), which provide the Texas Commission on Law Enforcement Officer Standards and Education with authority to propose and adopt rules of practice and procedure as necessary.

◆ ◆ ◆
§211.68. *Instructor License.*

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

(f) The commission will issue an instructor license to any person who qualifies under the provisions of subsec-

tion (a) of this section.

(g) The commission may issue a specialized instructor license to a person who meets the training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director to qualify as a drug recognition expert (DRE) instructor.

(h)(f) The effective date of this section is February 1, 1989.

◆ ◆ ◆
§211.85. *Proficiency Certificates.*

(a) A permanent peace officer license holder who is reported to the commission as currently appointed as a peace officer may, if qualified, be issued one of the following proficiency certificates:

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

(4) crime prevention inspector; [or]

(5) investigative hypnotist; or

(6) drug recognition expert.

(b)-(k) (No change.)

(l) To qualify for: an investigative hypnotist certificate, the applicant must meet the requirements found in §211.103 of this title (relating to Investigative Hypnosis by a Peace Officer); or a drug recognition expert (DRE) certificate, the applicant must meet any training, testing, certification, recertification, or other standards that may be required by the commission in the discretion of the executive director.

(m)-(p) (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 March 27, 1989.

TRD-8902811

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Earliest possible date of adoption: May 8, 1989

For further information, please call: (512) 834-9222

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 115. Memoranda of Understanding with Other State Agencies

• 40 TAC §115.5

The Texas Rehabilitation Commission proposes new §115.5, concerning adoption by rule of a memorandum of understanding with other state agencies to eliminate unnecessary or duplicative program reviews of community mental health and mental retardation centers unless such reviews are required to comply with federal funding requirements. Senate Bill 257, 70th Legislature, 1987, requires the adoption by rule of this memorandum of understanding between the Texas Commission on Alcohol and Drug Abuse, Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department on Aging, Texas Education Agency, Texas Rehabilitation Commission, and Texas State Board of Pharmacy. The proposed text was published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4756) by the Texas Department of Mental Health and Mental Retardation and adopted in the December 16, 1988, issue of the *Texas Register* (13 TexReg 6200).

Charles Harrison, controller, has determined that for the first five-year period the proposed section is in effect there will be no fiscal

implications for state or local government or small businesses as a result of enforcing or administering the section.

Ray Vaughn, program specialist, 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 maximized use of each agency's reviews by eliminating duplication of program reviews unless duplicative reviews are necessary to comply with federal funding requirements. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ray Vaughn, Program Specialist, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8296.

The new section is proposed under the Texas Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to "... make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter."

§115.5. Elimination of Unnecessary or Duplicative Program Reviews of Community Mental Health and Mental Retardation Centers.

(a) The Texas Rehabilitation Commission adopts by reference a joint memorandum of understanding with the Texas Commission on Alcohol and Drug Abuse (TCADA), the Texas Department of Health (TDH), the Texas Department of Human Services (TDHS), the Texas Department of Mental Health and Mental Retardation

(TDMHMR), the Texas Department on Aging (TDoA), the Texas Education Agency (TEA), and the Texas State Board of Pharmacy (TSBP). The purpose of this memorandum of understanding is to identify programs under the auspices of community centers which are in the monitoring purview of more than one named state agency. For each program identified, this memorandum will:

(1) recognize as exempted from the requirements of the legislation those program reviews conducted in response to federal funding requirements; and

(2) describe the nature and extent of duplication of program review effort that is not conducted in response to federal funding requirements and suggest a means by which duplication of program review effort may be reduced or eliminated, as appropriate.

(b) Copies of the memorandum of understanding are available from the Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

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 March 31, 1989.

TRD-8902932

Charles W. Schiesser
Assistant Commissioner,
Legal Services Division
Texas Rehabilitation
Commission

Earliest possible date of adoption: May 8, 1989

For further information, please call: (512) 445-8124





Name: Stacie Roberts

Grade: 11

School: Plano High, Plano

Withdrawn Sections

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administrative Division

Substantive Rules

• 37 TAC §211.67

The Texas Commission on Law Enforcement Officer Standards and Education has withdrawn from consideration for permanent adoption a proposed §211.67 which appeared in the October 14, 1988, issue of the *Texas Register* (13 TexReg 5195). The effective date of this withdrawal is March 29, 1989.

Issued in Austin, Texas, on March 29, 1989

TRD-8902813

Vera Kocian
Secretary III
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: March 29, 1989

For further information, please call: (512)
834-9222





Name: Mauricio Lemus

Grade: 12

School: Plano High, Plano

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 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Educational Requirements

• 22 TAC §511.55

The Texas State Board of Public Accountancy adopts an amendment to §511.55, without changes to the proposed text as published in the January 17, 1989, issue of the *Texas Register* (14 TexReg 312).

The amendment to this section is required to establish technical writing as a required course as qualification for taking the uniform CPA examination.

The amended section will require at least three hours of technical writing under the educational requirements to take the uniform CPA examination on or after June 1, 1993.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to insure high standards of professional competency and learning.

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 March 28, 1989.

TRD-8902819 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: April 19, 1989

Proposal publication date: January 17, 1989

For further information, please call: (512) 450-7066

• 22 TAC §511.57

The Texas State Board of Public Accountancy adopts new §511.57, without changes to the proposed text as published in the January 31, 1989, issue of the *Texas Register* (14 TexReg 613).

The new section is required to allow for the

inclusion of technical writing under the accounting core courses.

The new section will provide that technical writing, as relates to public accountancy, will be part of the accounting core courses.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the definition of accounting courses.

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 March 27, 1989.

TRD-8902818 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: April 19, 1989

Proposal publication date: January 31, 1989

For further information, please call: (512) 450-7066.

• 22 TAC §511.58

The Texas State Board of Public Accountancy adopts new §511.58, without changes to the proposed text as published in the January 31, 1989, issue of the *Texas Register* (14 TexReg 614).

The new section is required to insure that the educational requirements for taking the uniform CPA examination will relate directly to the accountancy profession.

The new section will give the special guidelines for the type of courses which will meet the educational requirements for the CPA examination.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the definitions of related business subjects.

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 March 28, 1989.

TRD-8902817 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: April 19, 1989

Proposal publication date: January 31, 1989

For further information, please call: (512) 450-7066

TITLE 28. INSURANCE Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes

• 28 TAC §1.407

The State Board of Insurance adopts new §1.407, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 679).

Section 1.407 concerns assessment of maintenance taxes for 1989. The new section is necessary in order to record rates of assessment for 1989 for maintenance taxes which the Insurance Code and the Texas Health Maintenance Organization Act require the board to determine annually on various types of insurance and related activities.

The new section assesses maintenance taxes for 1989 on the basis of gross premiums for calendar year 1988 or on some other statutorily designated basis. Section 1.407 sets rates of assessment and applies those rates to life insurance; motor vehicle insurance; casualty and fidelity insurance and guaranty and surety bonds; fire and allied lines insurance, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

No comments were received regarding adoption of the new section.

This new section is adopted under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, and 23.08, and the Texas Health Maintenance Organization Act, §33, which provide authorization for the State Board of Insurance to assess maintenance taxes for the lines of insurance and related activities specified in §1.407.

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 March 30, 1989.

TRD-8902900 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 21, 1989

Proposal publication date: January 25, 1989

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

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter T. Minimum Standards for Medicare Supplement Policies

• 28 TAC §3.3312

The State Board of Insurance adopts new §3.3312, without changes to the proposed text as published in the February 21, 1989, issue of the *Texas Register* (14 TexReg 940).

Section 3.3312, concerns transitional requirements for the conversion of Medicare supplement insurance benefits and premiums to conform to Medicare program revisions. The new section is necessary to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums by licensed insurers, by companies subject to the Insurance Code, Chapter 20, and by health maintenance organizations, due to changes in the Federal Medicare Program. The new section provides for full disclosure of policy or contract benefits and benefit changes, and for refunds or credit of premiums associated with benefits duplicating Medicare program benefits.

The new section establishes requirements in accordance with federal law for elimination of provisions in policies or contracts which may duplicate Medicare benefits. The new section requires that notice must be given of modifications made to in-force Medicare supplement policies because of benefit changes mandated by the Medicare Catastrophe Coverage Act of 1988; that advertising, premium adjustments, and appropriate riders, endorsements, or policy forms must be filed with the board; and that approved riders, endorsements, or policy forms, appropriate premium adjustments, and accurate information concerning coverage, benefits, and premiums must be provided to covered persons. The new section requires that new Medicare supplement policies or contracts which eliminate duplication of benefits must be filed with the board. The new section prohibits compulsion of purchases of additional coverage, prohibits some solicitations, and prohibits dissemination of inaccurate information. The proposed new section also adopts by reference notification forms for compliance with requirements of the section. The new section also adopts by reference notification forms for compliance with requirements of the section.

No comments were received regarding adoption of the new section.

The new section is adopted under the Insurance Code, Article 1.04 and Article 3.74. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 3.74 authorizes the board to adopt reasonable rules as are necessary to implement and accomplish the specific provisions of Article 3.74, which concerns minimum standards for Medicare supplement policies

and contracts.

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 March 30, 1989.

TRD-8902941 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 21, 1989

Proposal publication date: February 21, 1989

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

Chapter 5. Property and Casualty Insurance

Subchapter G. Workers; Compensation Insurance

Premium Discount Plan for Workers' Compensation Insurance

• 28 TAC §§5.6151-5.6158

The State Board of Insurance adopts new §§5.6151-5.6158. Sections 5.6151, 5.6152, and 5.6154-5.6157 are adopted with changes to the proposed text as published in the January 3, 1989, issue of the *Texas Register* (14 TexReg 30). Section 5.6153 and §5.6158 are adopted without changes and will not be re-published.

Sections 5.6151-5.6158, concern standards under which a policyholder may be entitled to a premium discount on a workers' compensation insurance policy written by any insurer writing workers' compensation insurance in the state of Texas. The new sections are necessary to provide an incentive for policyholders to initiate and maintain effective loss control and accident prevention programs as recommended by insurers under the Insurance Code, Article 5.76-1, and to utilize the professional accident prevention services provided by insurance carriers under that article. In response to comments, adoption of §5.6151(a)(1), (b), and (c) includes changes to clarify that the requirement of an accident-free period of four years refers to accidents that have resulted in a claim against the policyholder's workers' compensation insurer. In response to comments, adoption of MDNM/§5.6151(a)(2) and of the title of §5.6152 includes clarification that the provisions of this subchapter describe a typical occupational safety Chapter 5. Property and Casualty Insurance and health program without requiring treatment of every element of the program as standard. In response to comments, the board has changed §5.6151(b) to clarify that, while an insurance carrier must state years for which the carrier was the insurer of an applicant for discount, the board does not expect the carrier to have knowledge or records of accident experience for years when the carrier was not the applicant's insurer. In response to comments, the board has added language to §5.6152(a)(3) to clarify that acting as safety program director can be an additional duty assigned to an existing employee. For greater clarity, adoption of these

new sections includes rewording of §5.6154(c) and §§5. 6155-5.6157.

The new sections set forth standards for accident prevention programs necessary for a workers' compensation insurance policyholder to qualify for a premium reduction of 10% and set forth procedures under which application may be made for premium discount.

Commenting for the sections was Acme Sign and Plastics Company Objecting against the sections as proposed were the Alliance of American Insurers, American Fructose-Dimmitt, Inc., Association Risk Management, the B Regional Transit Authority, Baytown Construction Company, Inc., Dart Manufacturing Company, Dixie Metals Company, the Dodson Insurance Group, Freedman Packing, Inc., Galveston County Water Control and Improvement District #1, Gulf States Utilities Company, Heath Constructors, Mar-Len, Inc., Mike Martinez Company, Offenhauser and Company, the City of Peryton, Santa Rosa Health Care Corporation, Southwestern Barge Fleet Service, Inc., State Farm Insurance Companies, Texas Employers' Insurance Association, Texas Safety Association, Texas School for the Deaf, Tubular Finishing Works, Wisenberg Insurance and Risk Management, and Young and Pratt Mechanical Contractors.

Some commenters argued that four years without an accident was too long a qualifying period for a premium reduction, and some commenters suggested that lesser reductions should be available to policyholders with no accidents for a shorter period of time or with only minor experience of accidents or claims. The State Board of Insurance responds that the Insurance Code, Article 5.55A(a), provides that a policyholder must demonstrate that the policyholder has not experienced an employee accident during a specific four-year period in order to be entitled to a premium reduction. One commenter questioned the propriety of the requirement for compliance with the Hazard Communication Act, since that Act does not designate the State Board of Insurance as the administrative agency responsible for administration or regulation under that Act. The board notes that the Insurance Code, Article 5.55A(a)(2), contains this requirement. Commenters urged that the sections should include a definition of employee accident or should refer to employee injuries. The board notes that employee accident is the term which the Insurance Code, Article 5.55A(a), uses; however, in response to these comments, the board has added language to clarify that references to accidents in §5.6151(a)(1), (b), and (c) refer to accidents resulting in claims. Commenters objected to overly specific descriptions of accident prevention programs, occupational safety, and health programs, training and educational courses, safety inspections, labor-management safety committees, and other methods toward greater safety. The board responds that these requirements result from an attempt to implement requirements of the Insurance Code, Article 5.55A; however, in response to these comments, the board has changed §5.6151(a)(2) and §5.6152 to refer to typical occupational safety and health programs rather than to standard programs. Commenters recommended a provision addressing possible future legislation for self-insuring workers' compensation. The board

notes that such a provision would be premature speculation. Commenters objected that the new sections contemplate that a policyholder's record of accident prevention will be verified by an insurance carrier who may not be completely aware of a policyholder's experience. The board notes that the Insurance Code, Article 5.76-1, indicates a legislative intent that insurers maintain awareness and assistance with policyholder's efforts toward accident prevention. In response to these comments, the board has inserted a sentence in §5.6151(b) to allow an insurance carrier to specify years for which the carrier was not the insurer of a particular applicant for premium discount and for which the carrier does not have knowledge of the applicant's accident experience. Commenters complained that references to premium discounts were confusing. The board notes that the Insurance Code, Article 5.55A, refers to a premium discount. Commenters noted that small policyholders may not need a full-time safety program director. In response to these comments, the board has added language to §5.6152(a)(3) to clarify that acting as safety program director can be an additional duty assigned to an existing employee.

The new sections are adopted under the Insurance Code, Article 5.55A(d), which authorizes the State Board of Insurance to adopt rules as necessary to provide criteria for approval of labor-management safety committees and qualification for premium reductions for workers' compensation insurance policyholders.

§5.6151. Premium Discount Plan For Workers' Compensation Insurance.

(a) Requirements. As prescribed by the Insurance Code, Article 5.55A, a policyholder will be eligible for a premium discount on a workers' compensation insurance policy, if all of the following conditions have been met:

(1) The policyholder must have demonstrated that the policyholder has not experienced, during the past four years but excluding the most current policy year, an employee accident that has resulted in a claim against the policyholder's workers' compensation insurer.

(2) The policyholder must have instituted and must comply with an accident prevention program consistent with the provisions of this subchapter as recommended by the policyholder's insurer under the Insurance Code, Article 5.76-1, or a similar program recommended by the division of occupational safety of the Texas Department of Health. A typical occupational safety and health program is described by the provisions of this subchapter. This typical program is designed to adequately serve most organizations, employers, and policyholders, regardless of size or type.

(3) The policyholder must have complied with the employee notice requirements of the Texas Hazard Communication Act (Texas Civil Statutes, Article 5182b), if applicable.

(4) A labor-management safety committee must have been formed, must be functioning, and must have been approved by the State Board of Insurance, and the policyholder must be complying with the recommendations of the committee. Standards for labor-management safety committees have been established and are provided in §5.6153 of this title (relating to Labor-Management Safety Committee). Approval can be sought initially by the employer's providing a copy of the committee's administrative guidelines and a list of the committee's members to the Director of Loss Control Regulation of the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. Approval may also be sought when an application for the discount is submitted; however, verification must be provided of the formation of a labor-management safety committee and of the length of time that the committee has been functioning.

(5) The policyholder or the policyholder's designated representative must have attended educational courses or participated in safety related conferences as described in §5.6154(c) of this title (relating to Safety Orientation and Training). Educational courses on accident prevention approved by the State Board of Insurance

under the Insurance Code, Article 5.55A(a)(4), shall be listed in the *Manual of Educational Courses on Accident Prevention* adopted, approved, and amended by the board under the Insurance Code, Article 5.96. Copies of the manual are available from the Director of Loss Control Regulation, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

(b) Application for discount. When a policyholder has complied with all of the requirements in subsection (a) of this section, an application may be submitted through the policyholder's insurance carrier to the Director of Loss Control Regulation, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The application will take the form of a letter on company letterhead stationery and will essentially certify that all requirements of the Insurance Code, Article 5.55A, have been complied with and that an approval for premium discount is requested. The insurance carrier must then verify that the policyholder has not experienced during the past four years an employee accident resulting in a claim and that the policyholder has adopted and is complying with an acceptable accident prevention program. If the insurance carrier does not have knowledge of all previous four years, the carrier should so state and verify only that period for which the carrier was the applicant's insurer. The letter will then be forwarded to the director of loss control regulation. The director of loss control regulation will review the application and recommend approval or disapproval by the commissioner of insurance. If the application is approved, an approval letter will be sent back to the policyholder with a copy to the insurance carrier. If the application is disapproved, the application, along with reasons for the disapproval, will be returned to the policyholder with a copy to the insurance carrier.

(c) Sample letter of application for discount. A sample letter of application for discount follows:

Example of Company letter

To: State Board of Insurance
Loss Control Regulation Division
1110 San Jacinto Boulevard
Austin, Texas 78701-1998

Through: XYZ Insurance Company
1200 America Boulevard
Anytown, Texas 76000

Subject: Application for premium discount on Workers' Compensation.

In accordance with Article 5.55A of the Texas Insurance Code, application is hereby submitted for approval of eligibility for a premium discount on workers' compensation insurance policy. The undersigned hereby certifies that all provisions of the law and all requirements as listed below have been met.

- a. No employee accidents resulting in a claim against the applicant's workers' compensation insurer have been experienced in the past four years.
- b. This applicant complies with and will continue to comply with an accident prevention program as specified by Article 5.55A(a)(1) of the Texas Insurance Code.
- c. The requirements of the Texas Hazard Communication Act have been and will continue to be met.
- d. An accident prevention program along with a labor-management safety committee has been established and recommendations of that committee are complied with. Attached are the administrative guidelines of that committee, the list of members, and minutes of the last several meetings. Approval of this committee is also requested at this time.
- e. Recommendations for completion of safety courses have been acted upon.

John Q. Boss
Chief Executive Officer

(d) Amount of premium discount. Upon approval of the application for eligibility for premium discount, the policyholder may be granted a 10% discount on the current policy. The discount may not be applied retrospectively. Applications for discount must be submitted on an annual basis for each year that all requirements are met.

§5.6152. Responsibilities of Policyholder-Employer under a Typical Occupational Safety and Health Program.

(a) The organization/facility/unit director (CEO) is responsible for:

(1) demonstrating personal commitment to the program with policy statement and funds;

(2) providing a safe environment, free of recognized hazards as required by federal and state statutes;

(3) appointing a qualified safety program director to manage the organization's safety program (acting as safety program director may be an additional duty assigned to an existing employee);

(4) providing guidance and emphasis on safety in the workplace; and

(5) requiring that operations and activities are planned from a safety viewpoint and carried out safely.

(b) The safety program director of an organization is responsible for:

(1) managing all aspects of the safety program so that all levels are familiar with the program and policy is supported;

(2) maintaining communication with the insurance company and coordinating safety matters;

(3) making periodic visits to each division/department/unit to evaluate safety activities and to provide guidance; and

(4) maintaining a record of injuries occurring throughout the organization, investigating all accidents, determining causes and trends, and taking action to reduce possibility of a recurrence.

(c) Managers at all levels are responsible for:

(1) implementing organizational directives designed to enhance safety;

(2) making certain that employees have been trained to carry out their duties safely;

(3) making certain that hazards are identified and that actions are taken to prevent accidents; and

(4) investigating and reporting accidents promptly.

(d) The line supervisor is responsi-

ble for:

(1) planning all jobs, operations, and activities so that accidents do not occur;

(2) conducting safety orientation and training for employees prior to the assignment of an actual work task;

(3) enforcing safety rules and regulations;

(4) conducting ongoing inspections and observations of work practices and physical conditions and taking prompt action to correct unsafe acts and physical hazards; and

(5) promptly investigating all accidents involving the supervisor's employees.

(e) The employee is responsible for:

(1) fully participating in and supporting the organization's safety and health program;

(2) reporting workplace hazards to the supervisor;

(3) attending training classes to become knowledgeable of job and safety requirements;

(4) wearing or using all items of protective clothing and equipment provided; and

(5) reporting all work-related accidents.

§5.6154. Safety Orientation and Training.

(a) Orientation at organization level. New employees will be given orientation and training at all levels prior to actual work assignments to familiarize them with:

(1) the organization safety policy, responsibility, and duties;

(2) hazards inherent to their specific jobs and the rules, regulations, and standards to prevent accidents;

(3) the location and use of fire fighting equipment in the workplace;

(4) instruction on how to report a fire; and

(5) place and locations where medical treatment may be obtained at the facility.

(b) General training of employees. Training on the following subjects should be given to employees as appropriate:

(1) basic principles of accident prevention;

(2) fire prevention and protection;

(3) hazard recognition and hazard reporting procedures;

(4) employee self-inspection

procedures of the immediate work area;

(5) the Texas Hazard Communications Act (employees' "Right to Know" legislation concerning hazardous chemicals and substances);

(6) accident and injury reporting procedures;

(7) prevention of back injuries;

(8) prevention of slips, trips, and falls;

(9) training for specialized operations (cranes, fork trucks, etc.).

(c) Training to meet requirements for premium reduction. Safety training is required to meet the requirements of the Insurance Code, Article 5.55A (concerning reduction in certain premiums; labor-management safety committees).

(1) For the purposes of this subsection, nondegree programs of instruction are categorized as basic, advanced, and special courses.

(2) Basic courses are intended for those who have recently been appointed to safety responsibilities and who have less than three years experience in accident prevention work.

(3) Advanced courses are intended for individuals who are safety directors, safety coordinators, safety trainers, personnel directors, technicians, trainers, or supervisors and who have more than one year of experience in accident prevention work and have attended the basic course(s).

(4) Special courses are intended to further the overall safety program by covering a wide range of topics to improve safety practices in specific areas or correct known deficiencies. Annual professional conferences of the Texas Safety Association, the American Society of Safety Engineers, the World Safety Organization, and the National Safety Council fall in the category of special courses.

(5) To qualify for premium reduction under the Insurance Code, Article 5.55A(a)(4), the policyholder shall comply with the requirements of this paragraph.

(A) Initial qualification. The policyholder or a designated safety representative of the policyholder shall be enrolled in one or more of the basic courses or shall show proof of previous successful completion of a basic course and be enrolled in one or more of the advanced or special courses.

(B) Degree programs. Degree programs in safety are offered at the baccalaureate and masters degree level by several Texas universities. Participation by the policyholder or by a designated safety representative of the policyholder in a

safety degree-producing program shall satisfy the education requirements and qualify for premium reduction.

(C) Refresher training. A supervisor for the policyholder shall schedule and conduct refresher training for applicable employees when a lack of training was a factor in any mishap or when other reasons exist that necessitate refresher or remedial training.

(D) Training records. A record should be maintained of training classes conducted.

§5.6155. Safety Inspections.

(a) Management and line supervisors at all levels will observe work practices, procedures, operations, activities, and equipment on a continuing basis and will correct deficiencies as soon as possible.

(b) To ensure that tools, materials, equipment, machines, vehicles, etc., are in safe condition for use, line employees should inspect their immediate work area prior to starting any job or activity.

§5.6156. Safety Awards. Each organization head should establish an awards program to give recognition to subordinate unit or section supervisors and employees for outstanding achievement. Deserving companies should also participate in other awards programs such as trade association award programs and award programs sponsored by the Texas Safety Association and the National Safety Council.

§5.6157. Accident Investigation and Reporting and Corrective Action.

(a) Every accident occurring within an organization will be investigated and reported.

(b) The immediate supervisor of any injured person shall investigate the accident and complete an approved accident report form.

(c) Investigations should identify true causes and contributing factors and should include recommended action to be taken to prevent recurrence.

(d) As part of the accident investigation, the supervisor shall:

(1) determine whether or not any injured employee had been properly trained to do the job in a safe manner; and

(2) determine whether or not a safety rule, regulation, or standard operating procedure had been violated by the employee.

(e) Based on the investigation, the supervisor shall take positive action to prevent recurrence of similar accidents. Such action may include training, revision of

rules, enforcement of rules, or correction of conditions.

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 March 30, 1989.

TRD-8902902

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 21, 1989

Proposal publication date: December 28, 1988

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

Subchapter L. Reporting Requirements for Liability Insurers under the Insurance Code, Article 1.24A and Article 1.24B

• 28 TAC §5.9202

The State Board of Insurance adopts new §5.9202, with changes to the proposed text as published in the January 20, 1989, issue of the *Texas Register* (14 TexReg 446). The adoption also includes changes to the form proposed for adoption by reference under §5.9202.

Section 5.9202 concerns adoption by reference of an annual summary closed claim report form and instructions for use by liability insurers. The new section is necessary to effectuate compliance with reporting requirements under the Insurance Code, Article 1.24B. The adoption includes a change to the first sentence of the proposed text of new §5.9202 to reflect that April 21, 1989, is the effective date for adoption by reference of annual closed claim report forms for liability insurers. The adoption also includes a change to the second sentence of the proposed section to reflect that the State Board of Insurance will itself be publishing these forms. Changes to the form adopted by reference add spaces for information identifying the reporting entity. The board has filed a copy of the changes to the form with the Secretary of State's office, Texas Register Division. Persons desiring copies of the changes can obtain copies from the Statistical and Rate Development Division of the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section adopts by reference instructions and an annual report form to be completed by liability insurers on all closed claims having an indemnity payment of \$10,000 or less for bodily injury.

Commenting for the section was the Texas Medical Association. Objecting against the section was the Texas Association of School Boards.

One commenter recommended that the State Board of Insurance should allow reporting entities to file reports covering a school year or a fiscal year or some other 12-month period whenever such a reporting period may be a more sensible basis than the calendar

year for reports from a particular entity. The board notes that the acts of the first called session of the Seventieth Legislature, Chapter 1, §8.01, provide that the first reports required to be filed by the Insurance Code, Article 1.24A and Article 1.24B, cover the calendar year 1988.

The new section is adopted under the Insurance Code, Article 1.24B, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.24B, authorizes the State Board of Insurance to prescribe the form and content of closed claim reports which insurers shall file with the board under Article 1.24B; to promulgate necessary rules for carrying out the Article; to define terminology, criteria, content, and other matters relating to the reports; and to designate types or lines of liability insurance required to provide information under the Article. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedures for adoption of rules by any state administrative agency.

§5.9202. Annual Closed Claim Report Forms—Liability Insurance under the Insurance Code, Article 1.24B. Effective April 1, 1989, the State Board of Insurance adopts by reference annual closed claim report forms for liability insurers together with instructions. The forms and instructions, which liability insurers shall use in complying with the reporting requirements under the Insurance Code, Article 1.24B, are published by the State Board of Insurance and are available from the Statistical and Rate Development Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 March 31, 1989.

TRD-8902937

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 21, 1989

Proposal publication date: January 12, 1989

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

• 28 TAC §5.9203

The State Board of Insurance adopts new §5.9203, with changes to the proposed text as published in the January 20, 1989, issue of the *Texas Register* (14 TexReg 446). The adoption also includes changes to the forms and instructions proposed for adoption by reference under §5.9203.

Section 5.9203 concerns adoption by reference of annual liability insurance supplemental report forms and instructions for use by liability insurers. The new section is necessary to effectuate compliance with reporting requirements under the Insurance Code, Article 1.24A. The adoption includes a change to

the first sentence of the proposed text of new §5.9203 to reflect that April 21, 1989, is the effective date for adoption by reference of annual liability insurance supplemental report forms. The adoption also includes a change to the second sentence of the proposed section to reflect that the State Board of Insurance will itself be publishing the forms. In response to comments, adoption of §5.9203 includes changes to the forms and instructions adopted by reference. The board has filed with the Office of the Secretary of State, Texas Register Division, a copy of these changes to the forms and instructions proposed for adoption by reference. Persons desiring copies of the changes can obtain copies from the Statistical and Rate Development Division of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section adopts by reference instructions and annual report forms to be completed by liability insurers on direct writings of liability insurance and related information.

Commenting for the section was the Texas Medical Association. Objecting against the section as proposed were the Alliance of American Insurers, the American Insurance Association, the Association of Fire and Casualty Companies in Texas, Employers Casualty Company, and the Texas Association of School Boards.

Several commenters objected to the collection of countrywide data. In response to these comments, the board deleted the requirement for filing countrywide data from pages one and three of the instructions. Several commenters objected to the instructions regarding use of an investment income allocation exhibit and requested the board either to refrain from specifying the investment income allocation method or to revise the proposed instructions to use the investment income data from the Insurance Expense Exhibit. The board responds that implementation of the Insurance Code, Article 1.24A, requires the use of an investment income allocation exhibit and therefore no amendment was made to the instructions concerning net investment income. Several commenters urged the board to allow the reporting of the supplemental financial information on a consolidated or group basis rather than a company by company basis. The board responds that the appropriate interpretation of Article 1.24A require the annual liability insurance supplemental report to be filed on a company by company basis. Several commenters requested that instruction five on page two of the proposed instructions relating to the reporting of unrealized capital gain or loss be deleted. The board responds that this information is useful in analyzing profitability and therefore is appropriate for collections in order to fully implement Article 1.24A. Several commenters requested that the 20 years of claims data called for on pages four-eight of the proposed form be shortened to 10 years. In response to these comments, the board shortened the by-year closed claim information to 15 years, including 1988, by amending the proposed section on pages four-eight in order to obtain the information required by statute without overly burdening those reporting. One commenter requested the board to allow the reporting of data on the basis of a fiscal year, a school year, or some other 12-month period for appropriate entities. The

board responds that the authorizing statute specifically refers to reporting on a calendar year basis.

The new section is adopted under the Insurance Code, Article 1.24A, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.24A, authorizes the State Board of Insurance to adopt necessary rules and forms to carry out statutory provisions requiring that, on or before May 1 of each year, each insurer shall file with the board a report covering its direct writing of liability insurance in this state. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedures for adoption of rules by any state administrative agency.

§5.9203. Annual Liability Insurance Supplemental Report under the Insurance Code, Article 1.24A. Effective April 21, 1989, the State Board of Insurance adopts by reference annual liability insurance supplemental report forms together with instructions. The forms and instructions, which liability insurers shall use in complying with the reporting requirements under the Insurance Code, Article 1.24A, are published by the State Board of Insurance and are available from the Statistical and Rate Development Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

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 March 31, 1989.

TRD-8902945 Nicholas Murphy
Chief Clerk
State Board of Insurance

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Proposal publication date: January 20, 1989

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

Chapter 11. Health Maintenance Organizations

Subchapter M. Acquisition of Control of, or Merger of, a Domestic Health Maintenance Organization

• 28 TAC §11.1205

The State Board of Insurance adopts an amendment to §11.1205, without changes to the proposed text as published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 742).

Section 11.1205, concerns approval by the commissioner of insurance and hearings in connection with proposed acquisitions of control of, or mergers of, domestic health maintenance organizations. The amendment is necessary to provide uninterrupted coverage

to enrollees of domestic health maintenance organizations that are subject to changes of control through a possible reduction of the time required for permitting changes of control.

The amendment provides that timely notice of hearing may be waived by the unanimous consent of all parties concerned with a change of control of a health maintenance organization.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Health Maintenance Organization Act, §22, which authorizes the State Board of Insurance to promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Act.

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

Issued in Austin, Texas, on March 30, 1989.

TRD-8902938 Nicholas Murphy
Chief Clerk
State Board of Insurance

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Proposal publication date: February 10, 1989

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (board) adopts the repeal of §§375.21, 375.35, and 375.71; new §§375.4, 375.35, 375.39, and 375.111; and amendments to 375.2, 375.3, 375.17-375.20, 375.31-375.34, 375.36, 375.38, 375.51, 375.62, 375.63, 375.72, 375.81-375.86, 375.88, 375.102, and 375.103. New §375.35 and amended §375.62 and §375.72 are adopted with changes to the proposed text as published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 744). The repeals of §§375.21, 375.35, and 375.71; new §§375.4, 375.39, and 375.111; and amendments to §§375.2, 375.3, 375.17-375.20, 375.31-375.34, 375.36, 375.38, 375.51, 375.63, 375.81-375.84, 375.86, 375.88, 375.102, and 375.103 are adopted without changes and will not be republished.

The board's amendments to §375.2 and §375.3, and new §375.4, change, add, or delete definitions, and add policy statements. The amendment to §375.2 adds definitions of application for assistance, funding year, planning area, and population; deletes the definition of project performance standards; and modifies the definitions of capitalization grant, closing, construction fund, eligible applicant,

facilities plan (renamed SRF engineering plan), plans and specifications (renamed contract documents), project, and treatment works. The amendment to §375.3 involves the addition of a policy statement regarding collection systems and modification of a policy statement regarding management of financial resources. New §375.4 is adopted to set forth the dates of applicability of the modifications to these sections. Most modifications to these sections would be effective only for applications for assistance in fiscal year 1990 and in subsequent years. However, the following sections apply to all projects after the sections become effective: §375.3(e), which states the board's policy regarding provision of state matching funds in excess of the amount required by the Act; §375.39, which allows the board to make hardship loans; §375.62(b) and §375.88, which reduce the minimum amount of retainage required from 10% to 5.0%; and §375.72(c) and §375.81(a), which provide for loan closing to occur prior to completion of design in certain instances.

The board's amendments to §§375.17, and 375.18-375.20 clarify procedures, and establish deadlines and requirements for submission of an application. Section 375.17 is amended by the addition of minor clarifying language which is more consistent with the Act, §201(o), concerning capital financing plans. Section 375.18 is amended to clarify procedures for the preparation of the project priority list. Section 375.19 is amended by modifying the rating system to provide additional rating points to applicants whose facilities produce compliant effluents but which exceed 75% of their permitted average flow, by adding a reference to new §375.111, which provides information for rating of projects and by the addition of minor clarifying language. The amendment to §375.20: modifies procedures relating to the intended use plan; establishes a deadline and content for submission of priority rating information and the required resolution by the governing body; describes the requirements pertaining to the submission of an application, including the deadline for submission, and the loss of priority ranking if the required deadline is not met; and details the board's procedure for distribution of funds to projects. Section 375.20 is also amended to authorize the board to provide additional matching funds if required to completely fund a project. Section 375.21 is repealed. All nonredundant provisions are incorporated elsewhere in these sections.

The amendments to §§375.31-375.34, 375.36, and 375.38, the repeal of §375.35, and the adoption of new §375.35, modify procedures for applying for financial assistance, and clarify and modify submittals required to more accurately describe the program requirements. Section 375.31 is amended to clarify the attendants required at a preapplication conference and to add and delete language for clarification. Section 375.32 is amended to require submittal of information regarding the project's source of water supply and to require evidence that a discharge permit application has been filed rather than a report on the status of permit application proceedings. Section 375.33 is amended by the addition of minor clarifying language regarding cost estimates. Section 375.34 is amended to clarify the information which should be included for submission in interlo-

cal contracts, bond ordinances, consultant contracts, and other required information, to clarify the information required to describe the applicant's ability to secure sites and easements for a project, and to require compliance with federal laws, regulations, and rules. Section 375.34 is amended to relocate §375.34(e), concerning the submission of a draft bond ordinance, to §375.72(a)(9) where it more appropriately applies. Section 375.35 required many revisions for clarification which can best be accomplished by the repeal of the current section and adoption of new §375.35. The new §375.35 clarifies when an offer of financial assistance can be made subject to the National Environmental Policy Act, allows the board to adopt previous determinations issued by federal agencies, and adds provisions relating to supporting development in floodplain areas. The new section also clarifies the language that existed in the repealed section and contains specific references to applicable federal laws. A change to the text published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 744) is made in §375.35(a) where the phrase "... a stand alone document..." is deleted from the seventh sentence.

The sentence now reads "The majority of applicants will prepare an EID developed, in accordance with guidance available from the board." The board feels this change should be made to eliminate the possible misconception that the environmental information document (EID) is unrelated to the SRF engineering plan. This change does not alter the substantive content of this section. Section 375.36 is amended to modify terminology, to clarify the requirements for an adequate user charge system and capital financing plan; to require a description of the project performance certification, to require a cost estimate, and reimbursement schedule, and to clarify the approval process for an SRF engineering plan. The amendment to §375.36 removes the requirement for submittal of information concerning the water conservation plan and removes the reference to release of funds for planning. Section 375.38 is amended to clarify the process for review of loans by the executive administrator. A new §375.39 is adopted, which allows the board to consider providing financial assistance for hardship situations, establishes guidance for defining hardship, and modifies the application process for hardship situations.

Section 375.51 is amended to clarify conditions for receiving an extension of the expiration date of the board's commitment for financial assistance.

The board adopts amendments to §375.62 and §375.63, to add minor clarifying language and to change the requirement for retainage from progress payments in §375.62, and to change terminology in §375.63. A change to the text published in the February 10, 1989, issue of the *Texas Register* is made in §375.62(b)(5) to correct the incorrect reference to §375.86 to §375.88, which is the correct cite.

The board repeals §375.71, which provided for the partial release of funds for planning purposes; and amends §375.72 to require that submittals required for loan closing include an updated reimbursement schedule, executed contract for consultant services,

and a proposal for adequate construction inspection; to add the requirements that the applicant be a designated management agency; to add a provision waiving submittal of certain closing documents to allow closing to occur prior to completion of project design; and to delete a reference to partial release of funds for planning. The requirement for submission of a bond ordinance, originally in §375.34(e), is added to §375.72 with some minor clarifying language included. A change to the text published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 744) is made in §375.72(c) in the first sentence after the word "project" by inserting the phrase "...the executive administrator will so advise the board." The remainder of the first sentence will begin as a new sentence reading: "The board at its option of this section." The board feels this change should be made in order to assure the board will be made aware in such situations. This change does not change the substantive content of this section.

Amendments are adopted to §§375.81-375.84, 375.86, and 375.88, to require submittal of closing documents which were waived in §375.71 and to require the applicant to hold a preconstruction conference, in §375.81; to make minor changes in terminology in §§375.82-375.84; to modify the time for submittal of an operation and maintenance manual in §375.86; and to reflect the change in progress payment retainage in §375.88.

Amendments are adopted to §375.102 and §375.103, to add minor clarifying language to §375.102 and §375.103, and to require records retention in §375.103.

New §375.111 is adopted to include rating sheets and tables required for the priority rating process.

A public hearing was held on February 24, 1989, to receive public comments. Written comments were accepted until 12 a.m., February 24, 1989. Two comments were received expressing support for the modification to §375.72(c) which will allow the board to authorize the closing of a loan at the beginning of the design phase. One comment was received opposing the repeal of §375.71, which provides for a partial release of funds to fund the planning phase of a project. The commenter stated that provisions need to be made to provide assistance to small cities to complete planning. A second comment was received regarding the amendment to §375.19, which will enable a city to have rating points calculated in the category of existing need when the city's existing treatment facility reaches 75% or more of its design capacity. The commenter stated that this was a good provision since it allowed compliant cities to have rating point calculated which would not have been calculated under the previous system, however, it could possibly penalize a city which identified and acted upon its needs prior to reaching 75% of capacity. A third comment was received relating to the proposed amendment to §375.19, which would require the agency to use a specific permit effluent set for the purpose of rating projects where no specific future permit effluent sets had been established by the Texas Water Commission (commission). The commenter recommended using the effluent sets which had been established in similar

permits in the same watershed to determine the effluent set to be used for rating purposes.

Comments for some of the amendments were received from the City of Mount Pleasant and from the Texas State Senate. Comments against some of the amendments were received from the City of Dallas and the City of Edna.

The board disagrees with the first comment and believes §375.71 should be repealed because the partial release of funds originally envisioned by this section would have to be made on the basis of very limited information about the project. The board believes that the purchase of a political subdivision's bonds in such circumstances would be a questionable investment and feels that the early closing provision which was adopted in the amendment to §375.72(c) provides a safer, more conservative mechanism for providing early assistance to small communities.

The board also does not agree with the second comment regarding calculating priority rating scores. The board believes that the selection of the 75% level is consistent with the commission's requirements that planning begin when the 75% capacity level is reached and is more consistent with the water quality related goals of the program.

The board concurs with the third comment in part. Whenever future effluent limits for a watershed are available as a result of a waste load evaluation having been performed, the effluent limits from such permits (and from the waste load evaluation) will be used for rating purposes. However, for all stream segments where waste load evaluations have not been performed, the board believes the specific effluent limits should be used for rating purposes.

Introductory Provisions

• 31 TAC §§375.2-375.4

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

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 March 28, 1989.

TRD-8902868 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: April 21, 1989

Proposal publication date: February 10, 1989

For further information, please call: (512) 463-7855

Program Requirements

• 31 TAC §§375.17-375.20

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

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 March 28, 1989.

TRD-8902869 Suzanne Schwartz
General Counsel
Texas Water Development
Board

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For further information, please call: (512) 463-7855

• 31 TAC §375.21

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

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 March 28, 1989.

TRD-8902870 Suzanne Schwartz
General Counsel
Texas Water Development
Board

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For further information, please call: (512) 463-7855

Applications for Assistance

• 31 TAC §§375.31-375.36, 375.38, 375.39

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

§375.35. Required Environmental Review and Determinations.

(a) General. The applicant's preparation of the environmental information and the executive administrator's review and issuance of a determination forms an integral part of the planning process required of any potential applicant to the fund. There are three levels of environmental information required, varying according to the nature and scope of the project and the environment in which it is proposed. Correspondingly, the appropriate level of review will be conducted by the board and formal determinations documenting the review are issued. The categorical exclusion (CE) is directed toward those applicants proposing only minor rehabilitation or functional replacement of existing equipment. Although the environmental information required is small, the proposed project must fit a narrow range of criteria defined in paragraph (1)(A) of this subsection. The CE must be revoked and an environmental in-

formation document (EID) must be prepared if the project is subsequently modified so as to exceed the limits of the criteria. The majority of applicants will prepare an EID, developed in accordance with guidance available from the board. In addition to a greater amount of information to be supplied by the applicant, a public hearing must be held on the proposed project and the determination, a finding of no significant impact (FNSI), is also subject to public comment for a period no less than 30 days following its issuance. All applicants whose proposed projects do not meet the criteria for either a CE or environmental impact statement (EIS) must prepare an EID. Although there are other criteria involved, as described in subsections (a)(I)(C) and (d)(3) of this section, an EIS is usually required of those projects that are so major in scope or involve such environmentally sensitive areas (i.e. 'floodplains' endangered species habitat, etc.) that the proposed project may have significant adverse social or environmental impacts. An EIS requires close coordination and involvement of the board and other agencies in its preparation and results in a record of decision (ROD). The board's staff shall endeavor to provide guidance as to the appropriate level of environmental information to applicants during the pre-planning process. All applicants are urged, however, to review the criteria and contact the board's staff, particularly if there is doubt as to the level of environmental information that is appropriate to the proposed project. Based on the environmental information and as required by the provisions of the Act, §602(b) (6) and §375.17 of this title (relating to Capitalization Grant Requirements), the executive administrator will conduct an independent and interdisciplinary environmental review consistent with the National Environmental Policy Act (NEPA) of all projects proposed for funding through the SRF. This review will further insure that the proposed project will comply with the applicable local, state, and federal laws and board rules relating to the protection and enhancement of the environment. Based upon the staff's review, the executive administrator will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determinations will include mitigative provisions to be applied as a condition of receiving financial assistance and no financial assistance will be provided for building until a final environmental determination has been made. Nothing in these rules shall prohibit any public, private, or governmental party from seeking administrative or legal relief from the determinations of the board.

(1) Basic environmental determinations. There are three basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund these are: a determination to categorically exclude a proposed project from a formal environmental

review, a FNSI based upon a formal environmental review supported by an EID, and a determination to provide or not provide financial assistance based upon a ROD following the preparation of an EIS. The appropriate determination will be based on the following criteria.

(A) The CE determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.

(i) Proposed projects which meet the following criteria may be categorically excluded from formal environmental review requirements.

(I) The proposed project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works. Examples include infiltration and in-flow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites.

(II) The proposed project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(ii) CE's will not be granted for proposed projects that entail:

(I) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population 30% or greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; or

(VI) the construction of facilities which will not be, or apparently will not be, cost-effective or are likely to cause significant public controversy.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with guidance devel-

oped by the executive administrator. Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a CE or EIS will be required to prepare an EID. The executive administrator's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based upon an EIS prepared in conformance with the format and guidelines described in subsection (b)(3) of this section. An EIS will be required when the executive administrator determines any of the following:

(i) the proposed project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of a proposed project's construction or operation will conflict with local or state laws or policies;

(iii) the proposed project may have significant adverse impacts upon:

(I) wetlands;

(II) floodplains;

(III) threatened and endangered species or their habitats;

(IV) cultural resources including parklands, preserves, other public lands, or areas of recognized scenic, recreational, agricultural, archeological, or historic value;

(iv) the proposed project will displace population or significantly alter the characteristics of existing residential areas;

(v) the proposed project may directly or indirectly (e.g., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife, or their natural habitats;

(vi) the proposed project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) Other determinations that are required of the board.

(A) Recognizing that a project may be altered at some time after an environmental determination on the proposed project has been issued, the executive administrator will provide that, prior to approval, the contract documents, loan application, and related documents will be examined for consistency with the environmental determination. If minor inconsistencies are found and the amended project will not entail adverse environmental impacts different from those previously identified, the project may be allowed to proceed without additional formal environmental review. When substantive inconsistencies are found or new adverse environmental impacts may result, the executive administrator will revoke a CE and require the preparation of an EID or an EIS, consistent with the criteria of subsection (a)(1) of this section, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the executive administrator will:

(i) reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI when a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or

(iv) issue a supplement to a ROD, or revoke the ROD and issue a public notice that financial assistance will not be provided.

(B) When five or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the executive administrator will re-evaluate the proposed project, environmental conditions, and public views, and prior to presentation of the application to the board, proceed in accordance with subparagraph (A) of this paragraph.

(3) Other determinations that are available to the board.

(A) The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations may be considered to be current and applicable under the environmental review requirements of this section. In so doing, the executive administrator will insure that all mitigative measures specified in the pre-

vious determinations are applied as conditions of the loan agreement and that such adoption will be consistent with the requirements of these rules. The executive administrator will adopt the previous determination by means of a statement of findings, when the proposed project and its previous determination are to be adopted without substantial modifications, or in a FNSI which will explain modifications to the proposed project, potential environmental impacts identified during an environmental review, and any mitigative measures proposed in addition to those included in the federal environmental determination to be adopted.

(B) In order to better inform the public, the executive administrator may issue a statement of findings to interested agencies and public groups describing the outcome of a mitigative condition required by an environmental determination.

(b) Required environmental information. A minimum of three copies of all information required in this subsection shall be submitted to the executive administrator.

(1) Applicants seeking a CE for their proposed projects will provide the executive administrator with sufficient documentation to demonstrate compliance with the criteria of subsection (a)(1)(A) of this section. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs;

(B) a statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and

(C) a plan map or maps of the proposed project showing:

(i) the location of all construction areas;

(ii) the planning area boundaries; and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a CE and for which the executive administrator has made a preliminary determination that an EIS will not be required. The executive administrator will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.

(A) At a minimum, the contents of an EID will include:

(i) the purpose and need

for the project;

(ii) the environmental setting of the proposed project and the future of the environment without the project;

(iii) the alternatives to the project as proposed and their potential environmental impacts;

(iv) a description of the proposed project;

(v) the potential environmental impacts of the project as proposed including those which cannot be avoided;

(vi) the relationship between the short term uses of man's environment and the maintenance and enhancement of long term productivity;

(vii) any irreversible and irretrievable commitments of resources to the proposed project;

(viii) a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and

(ix) documentation of required public participation activities and coordination with appropriate governmental agencies.

(B) Prior to the applicant's adoption of the SRF engineering plan, the applicant will hold a public hearing on the proposed project and the EID, and provide the executive administrator with a verbatim transcript of the hearing. The executive administrator will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least 30 days in advance in a local newspaper of general circulation. Notice of the public hearing and availability of the documents also will be sent at least 30 days in advance of the public hearing to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attenders, any written testimony, and the applicant's responses to the issues raised.

(C) The applicant will provide copies of the EID to all federal, state, and local agencies and others with an interest in the proposed project. The executive administrator will provide guidance to the applicant regarding coordination requirements.

(3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the preferred alternative, and their environmental, economic, and social impacts. The following format must be followed by the applicant unless the executive administrator determines there are compelling reasons to do

otherwise:

(A) a cover sheet identifying the applicant, the proposed project(s), the program through which financial assistance is requested, and the date of publication;

(B) an executive summary consisting of a 10 to 15 page precis of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include;

(i) a description of the existing problem;

(ii) a description of each alternative;

(iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

(iv) any major conclusions;

(C) the body of the EIS, which will contain the following information:

(i) a complete and clear description of the purpose and need for the proposed project and objectives;

(ii) a balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

(iii) a description of the alternatives available to the board including:

(I) providing financial assistance to the proposed project;

(II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) providing no financial assistance;

(iv) a description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance, or otherwise effect or have an interest in any of the alternatives;

(v) a description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use, and cultural resources of the planning area. The executive administrator will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in a manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.

(4) The draft EIS will be provided to all local, state, and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commenters will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The board's staff will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(5) Material incorporated into an EIS by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in subsection (b)(4) of this section.

(6) Preparation of the EIS will be done, at the discretion of the executive administrator: directly by its own staff; by consultants to the board; or by a consultant, contracted by the applicant subject to approval by the executive administrator. In the latter two cases, the consultants will be required to execute a disclosure statement prepared by the executive administrator signifying they have no financial or other conflicting interest in the outcome of the project. When an EIS is prepared by contractors, either in the service of the applicant or the board, the executive administrator will independently evaluate

the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(7) The following public participation requirements are the minimum allowable to the applicant and the board.

(A) Upon making the determination that an EIS will be required of a proposed project, the executive administrator will publish in the *Texas Register* and distribute a notice of intent to prepare an EIS.

(B) As soon as possible after the notice of intent has been issued, the executive administrator will convene a meeting of the affected federal, state, and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared and issued separately. In no case will the notification period be less than 45 days. As part of the scoping meeting the board will, at a minimum:

(i) determine the significance of issues and the scope of those significant issues to be analyzed in depth in the EIS;

(ii) identify the preliminary range of alternatives to be considered;

(iii) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) discuss the method for EIS preparation and the public participation strategy;

(v) identify consultation requirements of other laws and regulations;

(vi) determine the relationship between the preparation of the EIS and the completion of the SRF engineering plan and any necessary arrangements for coordination of the preparation of both documents.

(C) Following the scoping process, the executive administrator will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the applicant and other interested parties.

(D) The draft EIS will be the subject of a formal public hearing and any other public participation activities determined to be appropriate during the scoping

process. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of subsection (b)(2)(B) of this section except that the advertisement period for the public hearing and comment periods for the draft EIS and final EIS will be no less than 45 days. The executive administrator will publish, in the *Texas Register* and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least 45 days prior to making any environmental determination.

(c) Environmental Review.

(1) When the executive administrator has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a CE is to be rescinded, the executive administrator will prepare a public notice of the determination and the availability of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The executive administrator, concurrent with the publication, will distribute the notice to all interested parties.

(2) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the executive administrator to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the executive administrator may require the applicant to submit additional information or undertake additional public participation and coordination to support the environmental determination. Based on the environmental review, the executive administrator will prepare an EA, describing:

(A) the purpose and need for the proposed project;

(B) the proposed project, including its costs;

(C) the alternatives considered and the reasons for their rejection or acceptance;

(D) the existing environment;

(E) any potential adverse impacts and mitigative measures; and

(F) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(3) Based upon this EA, the ex-

executive administrator will issue a FNSI or issue a notice of intent to prepare an FNIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the board. The EA will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the SRF engineering plan or the provision of financial assistance for building will be taken by the board for at least 30 days after the issuance of the FNSI.

(4) Following the public hearing on the draft EIS and the comment period on the final EIS and at the time of the decision to approve the SRF engineering plan or to provide or deny financial assistance to the propose project, the executive administrator will prepare a concise public ROD. The ROD will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(d) Application of other laws and authorities. In addition to the requirements of state law and rules, the Act, and the NEPA, the board must, as required by the initial guidance for the state water pollution control revolving fund and the capitalization grant agreement, insure that each project proposed to receive SRF financial assistance complies with the following federal laws and authorities respecting the human environment: the Archeological and Historic Preservation Act of 1974, Public Law 93-191; the Historic Sites Act; the Clean Air Act, 42 United States Code 7506(c), the Coastal Barrier Resources Act, 16 United States Code 3501 et seq., the Coastal Zone Management Act of 1972, Public Law 92-583, as amended; the Endangered Species Act, 16 United States Code 1531 et seq.; Executive Order 11953, Protection and Enhancement of the Cultural Environment; Executive Order 11988, Floodplain Management; the Flood Disaster Protection Act of 1973, Public Law 93-234; Executive Order 11990, Protection of Wetlands; the Farmland Protection Policy Act, 7 United States Code 4201 et seq.; the Fish and Wildlife Coordination Act, Public Law 85-624, as amended; the National Historic Preservation Act of 1966, Public Law 89-665, as amended; the Safe Drinking Water Act, §1424(e), Public Law 92-523, as amended; and the Wild and Scenic Rivers Act, Public Law 90-542, as amended. Because particular federal and/or state agencies are charged with the enforcement of or permitting under many of these laws and authorities, the executive administrator will provide guidance to applicants to the fund regarding consultation requirements and

will encourage proper coordination of project planning with the appropriate agencies. Because of their complexity and critical importance to the board's administration of the fund, the board has adopted the following sections to effect proper compliance with the requirements of the Flood Disaster Protection Act of 1973, the Coastal Barrier Resources Act, and Executive Order 11988.

(1) The board will not provide financial assistance from the SRF for any project element that is proposed to be constructed in a floodplain when the applicant's community is sanctioned by the Federal Emergency Management Agency (FEMA) in its administration of the National Flood Insurance Program, pursuant to the requirements of the Flood Disaster Protection Act of 1973, Public Law 93-234.

(2) The board will not provide financial assistance from the fund to any entity proposing construction in or extension or expansion of sewerage service into any area within the Coastal Barrier Resources System other than those permitted by the Coastal Barrier Resources Act, 16 United States Code 3501 et seq.

(3) Pursuant to the requirements of Executive Order 11988, the board will avoid direct and indirect support of development in floodplains wherever there is a practicable alternative. Therefore, both to preserve the significant natural functions and values of floodplains and to protect human health and safety.

(A) The board may provide financial assistance from the fund for the transportation or treatment of wastewater generated in a floodplain only when the proposed project will provide service to:

(i) areas of existing development in a floodplain;

(ii) facilities such as marinas which, by their nature, must be located in floodplains;

(iii) areas of projected growth if an EID demonstrates that the proposed development will be consistent with FEMA's floodplain management criteria for flood prone areas (40 Code of Federal Regulations 60.3) and will have no significant impacts on natural functions and values of floodplains;

(iv) areas of projected growth if an EIS demonstrates that there is no practicable alternative to such growth, that such growth will be consistent with the floodplain management criteria cited in clause (iii) of this subparagraph and that the benefit of such growth outweigh its costs to the natural functions and values of the effected floodplains or risks to human health and safety.

(B) When regional systems are proposed, the board will require the

regional authority and the member entities to demonstrate compliance with these rules.

(C) For the purposes of this subsection, the following definitions will apply.

(i) Areas of existing development—All or part of the project planning area which, at the time of the board's issuance of its environmental determination, is:

(I) occupied by existing structures or facilities;

(II) substantially surrounded by existing structures and facilities and which serves no significant independent natural floodplain function; or

(III) characterized by substantial investment in public infrastructure (e. g., roads and utilities are available to individual users) but which is only partially occupied by structures or facilities.

(ii) Floodplain or 100-year floodplain—Those lowland, relatively flat areas usually adjoining inland or coastal waters that have a 1.0% or greater chance of flooding in any given year. In determining these areas, the applicant will use flood insurance rate maps or flood hazard boundary maps approved by FEMA, where these maps are unavailable, the applicant should produce its own map(s) delineating the 100-year floodplain and showing 100-year flood elevations. Such maps should be prepared in accordance with FEMA's *Guidelines and Specifications for Study Contractors*.

(iii) Natural functions and values of the floodplain include:

(I) maintenance of water quality;

(II) transport, storage, and absorption of floodwaters;

(III) groundwater recharge;

(IV) flow of debris;

(V) wildlife habitat;

(VI) cultural and historical resource repository;

(VII) agricultural resources; and

(VIII) aesthetic resources.

(D) The board will, as appropriate and consistent with the requirements of these rules and Executive Order 11988, require assurance or include conditions to the provision of SRF financial assistance to insure compliance with these rules.

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 March 28, 1989.

TRD-8902871 Suzanne Schwartz
General Counsel
Texas Water Development Board

Effective date: April 21, 1989

Proposal publication date: February 10, 1989

For further information, please call: (512) 463-7855

◆ ◆ ◆
• 31 TAC §375.35

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

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 March 28, 1989.

TRD-8902879 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

◆ ◆ ◆
Board Action on Application

• 31 TAC §375.51

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

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 March 28, 1989.

TRD-8902872 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

Engineering Design

• 31 TAC §375.62, §375.63

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

§375.62. Contract Documents.

(a) Submittals. The applicant shall prepare contract documents including plans and specifications and a final engineering design report on all significant elements of the project. These documents shall conform to the requirements detailed in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems). The contract documents shall incorporate the accepted recommendations of any value engineering performed in accordance with §375.61 of this title (relating to Value Engineering). Three copies of the documents shall be submitted to the executive administrator.

(b) Additional requirements. The contract documents shall contain the following:

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

(3) except for hardship applications under §375.39 of this title (relating to Hardship Applications), provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the project not less than the prevailing wage rates, as determined by the United States Secretary of Labor, in accordance with the Davis-Bacon Act (40 United States Code, §276a-§276a-7);

(4) (No change.)

(5) provisions providing for the applicant to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator in accordance with §375.88 of this title (relating to Retainage);

(6)-(8) (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 March 28, 1989.

TRD-8902873 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

Prerequisites to Release of Funds

• 31 TAC §375.71

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

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-8902874 Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7855

◆ ◆ ◆
• 31 TAC §375.72

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

§375.72. Loan Closing.

(a) Submittals for loan closing. Prior to the closing of a loan for construction funds, the applicant shall submit for approval to the executive administrator the following documents:

(1) the contract documents approved in accordance with §375.63 of this title (relating to Approval of Contract Documents);

(2) (No change.)

(3) two original copies of each contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificate, act of assurance, wage rates, and other documents required by §375.62 of this title (relating to Contract Documents);

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

(8) a certified copy of an escrow agreement providing that funds for construction costs shall not be disbursed without board approval. This escrow agreement may be waived by the board if the applicant provides some other form of binding commitment to obtain board approval before funds are disbursed;

(9) a certified copy of the bond transcript including the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of bonds sold to the board containing the covenants as agreed upon or as may be required in the board's resolution. The board may require that bond resolutions and covenants reflect provisions consistent with the

executive administrator's approved land acquisition procedures framed in the application and supporting documents. If not combined in the bond transcript, a certified copy of the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of any other bonds to finance the balance of the cost of the projects. Prior to adoption by the governing body the applicant shall have submitted a pro forma draft, acceptable in form and substance to the executive administrator, of the ordinance, resolution, or similar instrument authorizing the issuance of each of the bond issues described in §375.33(6) or §375.33(10) of this title (relating to Required Fiscal Data). Such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

(A) that a construction fund shall be created which shall be separate from all other funds of the applicant. If operating revenues are to be used to retire the debt, the loan recipient may establish a restricted asset account within the appropriate enterprise fund instead of creating a separate construction fund. The board rules applicable to construction funds also apply to restricted asset accounts;

(B) that project accounts for the construction fund shall be maintained in accordance with standards set forth by the Governmental Accounting Standards Board. The construction fund shall be established at an official depository of the applicant and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the applicant is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the executive administrator and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other proceeds acquired by the loan recipient to plan and construct the project shall be placed in the construction fund. All proceeds in the construction fund shall be used for the sole purpose of planning and building the project as approved by the board except as otherwise stated in these sections or approved by the board;

(C) that a final accounting be made to the board of the total eligible and ineligible construction cost of the project upon completion of the project performance certification and submission of the final funds requisition. Such resolution or ordinance shall also provide that if the project be finally completed at a total eligible cost less than the amount of SRF funds received, or if the executive administrator disapproves construction of any portion of the

project as not being in accordance with the contract documents, the applicant shall immediately, upon notification from the board, return to the board the amount of any such excess and/or the cost as determined by the executive administrator relating to the parts of the project not built in accordance with the contract documents, to the nearest multiple of \$1,000 or \$5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the applicant a like amount of the bonds of the applicant held by the board in inverse numerical order. Any returned funds will be deposited in the SRF. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

(D) that an annual audit of the applicant, prepared by a certified public accountant or licensed public accountant, be provided to the executive administrator;

(E) that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;

(F) that the applicant will implement any water conservation program required by the board until all financial obligations to the state have been discharged;

(G) that the applicant will comply with any special conditions specified conditions specified by the board's environmental determination until all financial obligations to the state have been discharged; and

(H) that the applicant covenants to abide by the board's rules and relevant state statutes.

(10) bonds delivered in proper form to the office of the state treasurer, Austin, or other place specified by the executive administrator, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the funds shall be delivered;

(11)-(14) (No change.)

(15) other such instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require;

(16) evidence that the applicant has obtained an environmental determination in accordance with §375.35 of this chapter (relating to Required Environmental Review and Determination);

(17) evidence that the applicant has been designated a waste treatment management agency under the Act, §208 and §303e;

(18) copies of executed contracts for consultant services necessary for construction of the project and included as a part of the total cost to be funded with the proceeds of the loan from the board;

(19) an updated schedule of projected monthly reimbursements for eligible project costs to be requested by the applicant throughout the project funding period. Any eligible project costs which will be paid by the applicant prior to receiving reimbursement must be identified separately in this schedule; and

(20) a proposal for project inspection demonstrating how work under each construction contract will be adequately inspected including the qualifications of the inspection staff.

(b) (No change.)

(c) Loan closing prior to completion of design. In the event financial assistance is needed by the applicant to complete design of a project, the executive administrator will so advise the board. The board at its option may authorize the executive administrator to close the loan and release funds for planning and design without requiring the submittals in subsection (a)(1), (2), (3), (5), (19), and (20) of this section. However, these submittals will be required prior to awarding any construction contracts or releasing any funds for building purposes.

(d) Transfer of funds. Upon executive administrator's approval of the items detailed in subsections (a), (b), or (c) of this section if appropriate, the applicant shall make necessary arrangements with the executive administrator, consistent with established policy of the board, applicable federal requirements, and these sections, for actual transfer of funds from the fund to the applicant and the receipt from the applicant of those bonds, or other contractual agreement, theretofore authorized and issued for the purpose of financing the project.

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 March 28, 1989.

TRD-8902875

Suzanne Schwartz
General Counsel
Texas Water Development
Board

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Proposal publication date: February 10, 1989

For further information, please call: (512) 463-7855

◆ ◆ ◆
Building Phase

• 31 TAC §§375.81-375.84, 375.86, 375.88

The amendments are adopted under the Texas Water Code, §6.101, which provides

the board with the authority to adopt rules necessary to carry out its powers and duties.

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 March 28, 1989.

TRD-8902876 Suzanne Schwartz
 General Counsel
 Texas Water Development
 Board

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Proposal publication date: February 10, 1989

For further information, please call: (512)
463-7855



Post Building Phase

• 31 TAC §375.102, §375.103

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

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 March 28, 1989.

TRD-8902877 Suzanne Schwartz
 General Counsel
 Texas Water Development
 Board

Effective date: April 21, 1989

Proposal publication date: February 10, 1989

For further information, please call: (512)
463-7855



Rating Information

• 31 TAC §375.111

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

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 March 28, 1989.

TRD-8902878 Suzanne Schwartz
 General Counsel
 Texas Water Development
 Board

Effective date: April 21, 1989

Proposal publication date: February 10, 1989

For further information, please call: (512)
463-7855



Open Meetings

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

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

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

Texas Department of Agriculture

Monday, April 10, 1989, 9 a.m. The Texas Finance Authority for the Texas Department of Agriculture will meet in the Ninth Floor Conference Room, Texas Department of Agriculture, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the previous meeting; discuss conservation reserve program survey; hear presentation and discuss conservation reserve program proposals by investment bankers; hear and review agricultural business finance survey; and discuss and act upon proposed legislation.

Contact: Brian Muller, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: March 31, 1989, 4:02 p.m.

TRD-8902949

Wednesday, April 26, 1989. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. Times and agendas follow.

1:30 p.m. The department will hold administrative hearing to review alleged violation of Texas pesticide laws by C.L. Cloud, holder of commercial applicator license.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 3, 1989, 10:50 a.m.

TRD-8902960

3:30 p.m. The department will hold administrative hearing to review alleged violation of Texas pesticide laws by Troy E. Vaught doing business as Palm Flying Service, holder of commercial applicator license.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: April 3, 1989, 10:50 a.m.

TRD-8902961



Texas Air Control Board

Friday, April 14, 1989. The Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. Times and agendas follow.

8 a.m. The Monitoring and Research Committee will consider expansion of the medical resources advisory panel to create the Texas Air Control Board resource panel in health, environmental effects, and technology; and consider project to examine heavy metal contamination of soil near sources of heavy metal emissions.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902931

8:30 a.m. The Mobile Source Emissions Committee will review and discuss contracts with two councils of governments to support development of the post-1987 state implementation plan.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902930

9 a.m. The Budget and Finance Committee will discuss and consider fiscal year 1989 rebudget equipment requests, contracts with councils of government for supporting development of the post-1987 ozone state implementation plan, and internal audit charter.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902929

9:30 a.m. The Enforcement Committee will consider revision of the enforcement report and audit of timeliness and reporting of enforcement actions.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902928

10 a.m. The Regulation Development Committee will discuss and consider a board resolution requesting redesignation of Gregg County as attainment for ozone; and review and consider to adopt revisions to regulation VII, control of air pollution episodes.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902927

10:30 a.m. The board will approve minutes of the March 10, 1989, meeting; hear public testimony, reports, and enforcement report; consider agreed enforcement orders, resolution on redesignation of Gregg County, action on proposed rule, action on proposed agency contracts for state implementation plan support, resolution to approve internal audit charter, and new business.

Contact: Bill Ehret, 6330 Highway 290 East, Austin, Texas (512) 451-5711.

Filed: March 31, 1989, 3:20 p.m.

TRD-8902926



Texas Antiquities Committee

Tuesday, April 11, 1989, 3 p.m. The Texas Antiquities Committee will meet in 201 East 14th Street, Austin. According to the agenda summary, the committee will approve minutes of previous TAC meeting of February 3, 1989; consider exceptions and/or motions for rehearing in the matter of the Bowie County Commissioner's Court application for a partial demolition permit for the "Old" Bowie County Courthouse; and hear a presentation from Rick Stryker, Director, Corpus Christi Museum, regarding 1554 Padre Island Shipwreck exhibit. The committee will also meet in executive session to contemplate litigation and confer with counsel regarding advice relating to matters where there is a duty of a public body's counsel to his client.

Contact: Molly Godwin, P.O. Box 12276, Austin, Texas 78711, (512) 463-6098.

Filed: April 3, 1989, 9:05 a.m.

TRD-8902955

Texas Department of Commerce

Tuesday, April 11, 1989 The Board of Directors of the Texas Department of Commerce will meet in Suite 1100, 816 Congress Avenue, Austin. Times and agendas follow.

10 a.m. The board will discuss administrative and personnel matters. The board will also meet in executive session.

Contact: Mary Lane, (512) 320-9660.

Filed: March 31, 1989, 4:06 p.m.

TRD-8902951

1 p.m. The board will approve minutes of March 14, 1989, meeting; consider nominees to Texas-Mexico authority; update on commerce budget; update on major legislative issues affecting commerce; update on foreign offices in the Pacific Rim and Mexico City; update on tourism program; and update on the governing authority for JTPA.

Contact: Mary Lane, (512) 320-9660.

Filed: March 31, 1989, 4:06 p.m.

TRD-8902952

Texas Education Agency

Friday, April 7, 1989. The Texas Education Agency will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin. Times, committees, room numbers, and agendas follow.

8:30 a.m. The Committee of the Whole will meet in Room 1-104 to consider report on high school graduation requirements and the advanced high school program; adoption of the passing standards for the Texas Academic Skills Program test; issues under consideration for the 1990-1994 long-range plan for public education; and discuss pending litigation in executive session in accordance with Texas Civil Statutes, Article 62.12-17, §2(e).

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902846

11 a.m. The Committee on the Permanent School Fund will meet in Room 1-109 to review permanent school fund securities transactions; review permanent school fund investment portfolio; recommend permanent school fund investment program for April; estimated funds from the fund available for the April investment program; proposed amendment to 19 TAC §33.54, Investment of the Permanent School Fund; committees: appointment of the investment advisory committee to the permanent school fund; review of legislative recommendations on public education in Texas; and hear

report of the Ad Hoc Committee on investment practices of the permanent school fund.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902847

11 a.m. The Committee on Long-Range Planning will meet in Room 1-104 to review legislative recommendations on public education in Texas; and issues under consideration for the 1990-1994 long-range plan for public education.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902848

1:30 p.m. The Committee on School Finance will meet in Room 1-104 for a public hearing and discussion of the proposed state plan for federal adult education funding, fiscal years 1990-1993; status report on proprietary schools; proprietary schools and veterans education; memorandum of understanding for multiproblem children and youth; 1989 state textbook committee; rule change to waive valid certification as a prerequisite for creditable service under certain circumstances; reallocate computer services research and development money for education service centers to formula program funding; legislative recommendations; hear report on internal auditing; and proposed plan for the education of homeless children and youth.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902849

1:30 p.m. The Committee on Students will meet in Room 1-100 for a public hearing and discussion of the proposed state plan for federal adult education funding, fiscal years 1990-1993; status report on proprietary schools; status report on the development of a plan to provide for local and/or regional vocational education funding priorities; English language arts; request for proposed amendment to University Interscholastic League rules; review rationale for the scheduled student assessment administration dates beginning in school year 1990-1991; review legislative recommendations on public education in Texas; guidance sequence and implementation plan; status report on planning for a life skills curriculum.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902850

1:30 p.m. The Committee on Personnel will meet in Room 1-111 for a status report on the long-range plan of the Division of Accreditation; status report on accreditation of school districts; request and notification for cancellation or suspension of a certificate; teacher appraisal procedures; request for initial approval of an alternative teacher certification program, including bilingual education and special education pilots; review legislative recommendations on public education in Texas; adoption of the passing standards for the Texas academic skills program test; reappointment of trustee for Lackland Independent School District; number of teachers at various levels on the career ladder; composition, role, and activities of the Teachers' Professional Practices Commission; and staff development on child abuse.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902851

6:30 p.m. The State Board of Education will meet in the Bluebonnet I Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the board will hold a dinner meeting to receive reports from the chairmen of the State Board of Education committees, i.e., Committee on the Permanent School Fund, Committee on Long-Range Planning, Committee on School Finance, Committee on Students, Committee on Personnel, and Committee of the Whole, concerning items discussed in the committee meetings on Friday, April 7, 1989.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902852

Saturday, April 8, 1989, 8:30 a.m. The State Board of Education for the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will consider estimated funds from permanent school fund (PSF) available for April; investment of the PSF; committees; investment advisory committee on the PSF; legislative recommendations; proprietary schools and veterans education; multiproblem children and youth; 1989 state textbook committee; rules change to waive valid certification as a prerequisite for creditable service under certain circumstances; reallocate computer services money for education service centers to formula program funding; English language arts; University Interscholastic League rules; request and notification for cancellation or suspension of a certificate; teacher appraisal procedures; alternative teacher certification program; Texas academic skill program test; and trustee for

Lackland Independent School District.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 30, 1989, 3:11 p.m.

TRD-8902845

Interagency Council for Genetic Services

Monday, April 17, 1989, 1 p.m. The Interagency Council for Genetic Services will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes of prior meeting; discuss proposed legislation; discuss medicaid procedure codes; approve contract between council and Department of Health regarding fiscal agent for federal grant; hear report on TEXGENE Steering Committee meeting; approve advisory committee and subcommittee memberships; hear overview of Maltiz report; review and approve grant application, hear report from cost effectiveness subcommittee; and set next meeting date.

Contact: Patti J. Patterson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321.

Filed: April 3, 1989, 10:49 a.m.

TRD-8902962

Texas Heroes Monument Commission

Tuesday, April 4, 1989, 9:30 a.m. The Texas Heroes Monument Commission held a workshop in emergency session in the Conference Room, 2228 Mechanic, Galveston. According to the agenda summary, the commission heard secretary's report and treasurer's report; and held discussion. The emergency status was necessary in order to prepare for April 7, 1989, regular meeting.

Contact: Cindy Sullivan, 51 Colony Park Circle, Galveston, Texas (409) 744-5632.

Filed: April 3, 1989, 9:08 a.m.

TRD-8902963

Texas Housing Agency

Tuesday, April 11, 1989, 1 p.m. The Board of Directors of the Texas Housing Agency will meet in THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the board will discuss and possibly act on board organization relating to election of officers, resolve and establish advisory committees, appointment of advisory committees and review of duties of the advisory committees, and board and staff planning retreat; consider personnel issues concern-

ing THA's organizational chart, indemnification for agency staff in personnel matters, confirmation of deputy executive administrator position, and act on necessary resolutions for signature authority of agency documents; consider changes in procedures for the low income tax credit rules and San Jacinto garden loan; and hear report for programs 37 and 38 and REO contractor report. The board will also meet in executive session to discuss items pursuant to Texas Civil Statutes, Article 6252-17, §2(g), pertaining to personnel matters including staff evaluations.

Contact: T.R. Kenny, P.O. Box 13941, Austin, Texas 78704 (512) 474-2974.

Filed: April 3, 1989, 4:49 p.m.

TRD-8902986

Texas Commission on Human Rights

Tuesday, April 11, 1989, 10 a.m. The Texas Commission on Human Rights will meet in Room 1-100, Travis Building, Austin. According to the agenda summary, the commission will discuss and vote on agenda item(s) covered in executive session as necessary or required; welcome guests; approve minutes; hear administrative reports; quarterly cash flow statement; discuss upward modification of EEOC contract; consider pending legislation affecting the commission; personnel matters; status of EEO compliance training; status of commission's EEO conference; commissioner's issues; and unfinished business.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: March 31, 1989, 10:50 a.m.

TRD-8902880

Texas Department of Human Services

Friday, April 7, 1989, 9 a.m. The EPSDT Dental Professional Advisory and Review Subcommittee for the Texas Department of Human Services will meet in Conference Room 3W, Third Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the subcommittee will call order and roll call; approve January 13, 1989, minutes; hear opening remarks; legislative update; EPSDT dental budget/expenditure report; welfare reform; orthodontic program update; sealants; non-payment for aborted procedures; non-payment for orthognathic surgery; dental inpatient/outpatient hospital reimbursement and NHIC WATS lines; and meet in executive session.

Contact: Bridget Cook, P.O. Box 2960, Austin, Texas 78769, (512) 450-4127.

Filed: March 30, 1989, 3:58 p.m.

TRD-8902853

Tuesday and Wednesday, April 11 and 12, 1989, 9 a.m., daily. The Advisory Committee on Child Care Administrators of the Texas Department of Human Services will meet in the Ramada Inn, 5660 North IH-35, Austin. According to the agenda, the committee will approve minutes of February meeting; subcommittee meetings; subcommittee reports on recommendations on minimum standards for registered family homes child care administrator's licensing exam; assistant commissioner's report; and issue identification for future meetings.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas 78769, (512) 450-3253.

Filed: April 3, 1989, 11:05 a.m.

TRD-8902957

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Tuesday, April 11, 1989, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10279-Whether disciplinary action should be taken against Lonnie B. Collett, New Braunfels, who holds a group I, legal reserve life insurance agent's license and a group II, health and accident insurance agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902969

Tuesday, April 11, 1989, 10 a.m. The board will meet in Room 414, to consider motion for rehearing in the appeal of Leonard Eugene Keen from commissioner's order 88-1118. Final action on 28 TAC §§3.408, 7.73, and 19.1301-19.1320. Proposed action on rules relating to hazardous operation conditions. Board orders on several different matters. Personnel matters. Pending and contemplated litigation. Solvency matters. Amendment of board order 51468 concerning directors of Texas surplus lines stamping office.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 3, 1989, 3:57 p.m.

TRD-8902984

Tuesday, April 11, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10297-Whether disciplinary action should be taken against Linscomb & Williams, Inc., Belaire, who holds a group I, legal reserve life insurance agent's license.

Contact: Wendy Ingham, 1110 San Jacinto

Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902970

Wednesday, April 12, 1989, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10304-Whether disciplinary action should be taken against Roy Lee Hanks, Jr., Dallas, who holds a group I, legal reserve life insurance agent's license and a group II, health and accident insurance agent's license issued by the board.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902971

Wednesday, April 12, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 10303-Whether disciplinary action should be taken against Cleophus Noble Marshall, San Antonio, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902972

Wednesday, April 12, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10305-Whether disciplinary action should be taken against Jeffery Paul Ludy, Amarillo, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license issued by the board.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902973

Friday, April 14, 1989, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10315-Issuance of a cease and desist order ordering Ben Chauncey Doherty, III, Dallas, to cease and desist from engaging in unfair methods of competition or unfair and deceptive acts or practices pursuant to Texas Insurance Code, Article 21.21, §3 and §6.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:34 p.m.

TRD-8902974

Friday, April 14, 1989, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10312-Issuance of a certificate of authority for

Midland Presbyterian Home, Midland, under the Texas Continuing Care Facility Disclosure and Rehabilitation Act, §4(g).

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:33 p.m.

TRD-8902975

Monday, April 17, 1989, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10299-Whether disciplinary action should be taken against John Sullivan Bishop, Dallas, who holds a local recording insurance agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 3, 1989, 1:33 p.m.

TRD-8902976

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Lamar University System, Board of Regents

Thursday, April 6, 1989, 9 a.m. The Board of Regents Committee Meeting for the Lamar University System, Board of Regents, was held in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda summary, the Finance and Audit Committee met at 9 a.m.; Academic Affairs Committee at 9:30 a.m.; Building and Grounds Committee at 9:45 a.m.; Personnel Committee at 10:15 a.m.; and met in executive session at 11 a.m. under provisions of Texas Civil Statutes, Article 6252-17, §2, paragraph 3, e, legal; f, real estate; and g, personnel.

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

Filed: March 31, 1989, 2:05 p.m.

TRD-8902905

Thursday, April 6, 1989, 1 p.m. The board will meet in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda summary, the board will approve minutes of the previous meeting; hear chairman's comments-chancellor's comments; consider approval of Finance and Audit Committee recommendations, Academic Affairs Committee recommendations, Building and Grounds Committee recommendations, and Personnel Committee recommendations; and consider regents' comments and suggestions. The board will also meet in executive session.

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

Filed: April 3, 1989, 9:08 a.m.

TRD-8902964

Board of Law Examiners

Saturday-Monday, April 8-10, 1989, 8 a.m. daily, except 8:15 a.m. on Monday. The Board of Law Examiners will meet at the Lakeway Inn, 101 Lakeway Drive, Austin (on Saturday and Sunday) and at the Texas Law Center, 1414 Colorado, Austin (on Monday). According to the agenda, the board will consider minutes of the February 1989 meeting; budget-current status of fiscal year 1989 and consider amendments; discuss February 1989 and July 1989 exams; discuss long range plans regarding changes in exam procedures, programs to assist applicants, and character and fitness policies and procedures; questions of eligibility and special requests; and hearings on moral character and fitness.

Contact: Wayne E. Denton, Suite 116, 510 South Congress Avenue, Austin, Texas 78704, (512) 463-1621.

Filed: March 31, 1989, 12:21 p.m.

TRD-8902897

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Texas State Board of Medical Examiners

Friday, April 14, 1989. The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. Times and agendas follow.

8 a.m. The Reciprocity Committee will review applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902906

9 a.m. The Examination Committee will review applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902908

1:30 p.m. The Finance Committee will review financial reports and budget. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902909

2 p.m. The Legislative Committee will discuss pending legislation; meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902910

2:30 p.m. and April 15, 1989, 8 a.m. The board will discuss personnel, executive director's report (next meetings, licensure, enforcement, computer, investigator training session), minutes, pending litigation, consider reinstatements, probationers, board orders, committee appointments, committee reports, motion to dismiss or abate; continuing medical education; hearing-show cause; public hearings on rule chapters 186, 187, and 193. The board will also meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902911

4:30 p.m. The Disciplinary Process Review Committee will review minutes, enforcement report, and selected files; meet in executive session under authority of Texas Civil Statutes, Article 4495b, §§2.07, 3.05(d), 4.05(d), and 5.06(e)(1) and Attorney General Opinion 1974, H-484, Article 6252-17, discuss feasibility of increased membership on disciplinary panels; and discuss storage and destruction of closed files.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: March 31, 1989, 2:05 p.m.

TRD-8902907

Texas Department of Mental Health and Mental Retardation

The Texas Department of Mental Health and Mental Retardation will meet in the Administration Building Conference Room, Brenham State School, Highway 36 South, Brenham. Dates, times, and agendas follow.

Thursday, April 13, 1989, 11 a.m. The Board Planning and Policy Development Committee will consider board policy manual role of Citizens' Planning Advisory Committee; proposed revision of personnel rules governing physician salary augmentation program; adoption of amendment to subchapter governing designation as single

portal authority; procedures manual for interdisciplinary staffing; emergency adoption of subchapter governing client abuse and neglect in registered board homes; adoption of new sections in subchapter governing interagency agreements; and review of incentive programs. If deaf interpreters are required, notify TDMHMR, Ernest Fuentes, (512) 465-7585, 72 hours prior to meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756.

Filed: March 31, 1989, 2:24 p.m.

TRD-8902913

Thursday, April 13, 1989, 12:30 p.m. The Board Personnel Committee will consider approval of appointments of medical director, superintendent of Denton State School, director of El Paso State Center, and deputy commissioner for management and support. If deaf interpreters are required, notify TDMHMR, Ernest Fuentes, (512) 465-7585, 72 hours prior to meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756.

Filed: March 31, 1989, 2:24 p.m.

TRD-8902914

Thursday, April 13, 1989, 3 p.m. The Board Business and Asset Management Committee will review information services; proposed construction of Belfry at Lufkin State School; community-based capital construction projects for difficult-to-place mentally retarded persons; fiscal year 1989 operating budget adjustments; and update on legislative appropriation request. If deaf interpreters are required, notify TDMHMR, Ernest Fuentes, (512) 465-7585, 72 hours prior to meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756.

Filed: March 31, 1989, 2:24 p.m.

TRD-8902915

Friday, April 14, 1989, 9 a.m. The board of MHMR will hear citizens' comments (limited to three minutes); approve minutes of February 3, 1989; and consider issues. If deaf interpreters are required, notify TDMHMR, Ernest Fuentes, (512) 465-7585, 72 hours prior to meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756.

Filed: March 31, 1989, 2:24 p.m.

TRD-8902912

Board of Pardons and Paroles

Monday-Friday, April 10-14, 1989, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review, and consider informa-

tion and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: March 31, 1989, 10:33 a.m.

TRD-8902867

Tuesday, April 11, 1989, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: March 31, 1989, 10:32 a.m.

TRD-8902866

Polygraph Examiners Board

Thursday-Friday, April 13-14, 1989, 1 p.m. and 9 a.m., respectively. The Polygraph Examiners Board will meet at La Mansion Del Norte Hotel, 37 North East Loop 410, San Antonio. According to the agenda summary, the board will approve minutes of the January 1989 meeting; consider applications for licensure; review board's inquiry of approved polygraph schools; disciplinary hearing complaint BC1-03-fiscal year 1989; agency update; and consider any other polygraph related business that may come before the board.

Contact: Deborah Speicher, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: March 31, 1989, 3:44 p.m.

TRD-8902950

State Preservation Board

Monday, April 10, 1989, 7:30 a.m. The Permanent Advisory Committee to the Board for the State Preservation Board will meet in Room 314, Library and Archives Building, Austin. According to the agenda summary, committee will call order and roll call; approve minutes; discuss old or unfinished business: emergency repairs status and expenditures, fiscal year 1989 to date; new business: listing of change requests, legislation affecting SPB, land survey contract approval, general land office building master plan report, and capitol master plan report.

Contact: Michael Schneider, P.O. Box 1328, Austin, Texas 78711, (512) 463-5495.

Filed: March 31, 1989, 3:17 p.m.

TRD-8902925

Monday, April 10, 1989, 10 a.m. The State Preservation Board will meet in Room 314, Library and Archives Building, Austin. According to the agenda summary, the board will call order and roll call; approve minutes; discuss old or unfinished business: emergency repairs status and expenditures, fiscal year 1989 to date; new business: listing of change requests, legislation affecting SPB, land survey contract approval, general land office building master plan report, and capitol master plan report.

Contact: Michael Schneider, P.O. Box 1328, Austin, Texas 78711, (512) 463-5495.

Filed: March 31, 1989, 3:17 p.m.

TRD-8902924

Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Tuesday, April 11, 1989, 1:30 p.m. The Hearings Division will consider Docket 7297-Inquiry of the general counsel into intrastate WATS overcharges and petition for refunds.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 31, 1989, 3:04 p.m.

TRD-8902919

Thursday, April 20, 1989, 10 a.m. The Hearings Division will consider Docket 8673-Order of suspension and notice of prehearing conference.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1989, 2:55 p.m.

TRD-8902979

Monday, May 15, 1989, 10 a.m. The Hearings Division will consider Docket 6609-Request of the Colony for extended area service to the Dallas metro calling area.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1989, 2:54 p.m.

TRD-8902981

Wednesday, June 7, 1989, 10 a.m. The Hearings Division will consider Docket 7952-Complaint of Metro-Link Telecom, Inc. against Southwestern Bell Telephone Company.

Contact: Phillip A. Holder, 7800 Shoal

Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 3, 1989, 2:55 p.m.

TRD-8902980

Wednesday, June 14, 1989, 10 a.m. The Hearings Division will consider Docket 8640-Complaint of Compaq Computer Corporation against Southwestern Bell Telephone Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 31, 1989, 3:03 p.m.

TRD-8902920

Monday, July 10, 1989, 10 a.m. The Hearings Division will consider Docket 8298-Petition of Greenbelt Electric Cooperative, Inc. against West Texas Utilities Company.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 31, 1989, 3:03 p.m.

TRD-8902921

Railroad Commission of Texas

Monday, April 3, 1989, 9 a.m. The Oil and Gas Division for the Railroad Commission of Texas met in emergency session in the 12th Floor Conference Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division considered whether to plug a leaking well with state funds, H.R. Montgomery, Monte Ruth Cone Lease, Well 1, unknown field, Palo Pinto County. The emergency status was necessary as the well is leaking approximately 130 barrels of saltwater per day and is located less than 1/2 mile from the Brazos River, causing an imminent threat to the public health and safety.

Contact: Willis C. Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: March 31, 1989, 3:35 p.m.

TRD-8902933

Monday, April 10, 1989, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7257.

Filed: March 31, 1989, 10:47 a.m.

TRD-8902890

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7251.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902889

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7274.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902886

The commission will consider and act on the Flight Division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6787.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902883

The commission will consider various matters within the regulatory jurisdiction of the Railroad 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 its entirety or for particular action at a future time or date.

Contact: Meredith Kawaguchi, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7009.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902894

The commission will consider and act on the Office of Information Services/Office of Research and Statistical Analysis Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12970, Austin, Texas 78753, (512) 463-6710.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902887

The commission will consider and act on

the Investigation Division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6828.

Filed: March 21, 1989, 10:47 a.m.

TRD-08902888

The commission will consider and act on the Legal Division report on division administration, budget, procedures, and personnel matters; proposed and pending litigation.

Contact: Cue Boykin, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6921.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902893

The commission will consider various matters falling within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meetings and 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 its entirety or for particular action at a future time or date.

Contact: Meredith Kawaguchi, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7009.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902895

The commission will consider various matters within the regulatory jurisdiction of the commission. 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 its entirety or for particular action at a future time of date.

Contact: Andy Taylor, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6924.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902896

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6755.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902885

The commission will consider the report of the 1988 Gas Rules Blue Ribbon Advisory Committee, specifically recommendation IV.

Contact: Andy Taylor, 1701 North Con-

gress Avenue, Austin, Texas 78701, (512) 463-6924.

Filed: March 31, 1989, 10:48 a.m.

TRD-8902882

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline, and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6981.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902884

The commission will consider various matters within the regulatory jurisdiction of the commission. 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 its entirety or for particular action at a future time of date.

Contact: Jerry Hill, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6900.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902891

The commission will consider various matters within the regulatory jurisdiction of the commission. 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 its entirety or for particular action at a future time or date.

Contact: Karen Kornell, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7094.

Filed: March 31, 1989, 10:47 a.m.

TRD-08902892

Thursday, April 20, 1989, 10 a.m. The Oil and Gas Division for the Railroad Commission of Texas will meet at the Sheraton Crown Hotel and Conference Center, 15700 John F. Kennedy Boulevard, Houston. According to the agenda, the division will hold a statewide hearing on oil and gas.

Contact: Paula Middlebrook, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: March 31, 1989, 10:48 a.m.

TRD-8902881

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Texas Savings and Loan Department

Wednesday, April 12, 1989, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Agendas follow.

The department will accumulate a record of evidence in regard to the application of Guardian Savings and Loan Association, Houston, Harris County, to establish a branch office at 5353 West Atlantic Boulevard, Margate, Broward County, Florida, from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 31, 1989, 2:36 p.m.

TRD-8902917

The department will accumulate a record of evidence in regard to the application of Guardian Savings and Loan Association, Houston, Harris County, to establish a branch office at 801 South University Drive, Building B, Suite 112, Plantation, Broward County, Florida, from which record the commission will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 31, 1989, 2:36 p.m.

TRD-8902918

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Texas Southern University

Thursday, April 6, 1989, 9:30 a.m. The Executive Committee of the Board of Regents met in emergency session in Room 117, Hannah Hall Board Conference, Texas Southern University, Houston. According to the agenda, the committee considered legislative concerns and reviewed university budgetary matters. The emergency status was necessary because of a serious financial matter requiring the immediate attention of the board of regents.

Contact: Everett O. Bell, (713) 529-8911.

Filed: April 3, 1989, 10:51 a.m.

TRD-8902959

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University of Texas System

Thursday, April 6, 1989, noon. The Board of Regents and Standing Committees for the University of Texas System will meet in the Blumberg Auditorium, UTEP Library, Wiggins Road, U.T. El Paso, El Paso. According to the agenda summary, the board and committees will meet in executive session at noon and in open session at 1:30 p.m. to consider amendments to RRR; pol-

icy regarding employee discipline/grievance; chancellor's docket (submitted by system administration); student apartment project-UT Dallas; foundation matters; degree programs; outreach program-UTMDA Cancer Center; HMO contracts; fees; appointments to endowed academic positions, development boards and advisory councils; affiliation agreements; buildings and grounds matters including approval for projects, preliminary and final plans; award of contracts; land and investment matters; acceptance of gifts, bequests, and estates; establishment of endowed positions and funds; litigation; land acquisition and negotiated contracts; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: March 31, 1989, 1:10 p.m.

TRD-8902898

Texas Water Commission

Monday, April 3, 1989, 10 a.m. The Texas Water Commission met for an emergency agenda revision in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission 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 a particular action at a future date and time. The emergency status was necessary as the potential release of non-hazardous wastes creates an imminent threat to the environment.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: March 31, 1989, 9:13 a.m.

TRD-8902863

Thursday, April 13, 1989, 10 a.m. The Office of Hearings Examiner for the Texas Water Commission will meet in a revised notice in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiner will consider Docket 7801-R, application for a rate increase by Plum Creek Water Company.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 30, 1989, 3:58 p.m.

TRD-8902854

Thursday, April 13, 1989, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 Congress Avenue, Austin. According

to the revised agenda, the commission will consider various matters within the regulatory jurisdiction of the commission. 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 a particular action at a future date and time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: March 31, 1989, 9:13 a.m.

TRD-8902865-8902968

Thursday, April 20, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, William B. Travis State Office Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will determine whether an emergency order should be issued to Gold Coast Seafood, Inc., Palacios. The emergency order, if issued, would authorize Gold Coast Seafood to discharge wash water at a volume not to exceed 100,000 gallons per day average (not to exceed 200,000 gallons during any 24 hour period) from its shrimp processing facility located at the southeast corner of the intersection of Duson Street and Eighth Street in the City of Palacios in Matagorda County. The emergency order would expire 180 days from the date the order is signed or whenever a permit is issued, whichever occurs first. The wash water would be discharged via pipeline to Tres Palacios Bay. The applicant owns 15 acres of waterfront property on Tres Palacios Bay, Matagorda County, and the discharge line is centrally located on that property.

Contact: Sharon J. Smith, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: April 3, 1989, 1:36 p.m.

TRD-8902967

Thursday, April 20, 1989, 10 a.m. The Texas Water Commission will meet in Room 111, Stephen F. Austin Building, 1700 Congress Avenue, Austin. According to the agenda, the commission will consider various matters within the regulatory jurisdiction of the commission. 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 a particular action at a future date and time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: March 31, 1989, 9:13 a.m.

TRD-8902864

Thursday, June 8, 1989, 9 a.m. The Office of Hearings Examiner for the Texas Water Commission will meet at Council Chambers, Weatherford City Hall, 303 Palo Pinto, Weatherford. According to the agenda summary, the examiner will consider Doyle Hanle, P.O. Box 568, Aledo, Texas 76008, who has applied to the commission for renewal of Permit 13409-01 which authorizes a discharge of treated domestic wastewater effluent in phases with the final phase being a volume not to exceed an average flow of 250,000 gallons per day from the wastewater treatment plant which is located approximately 0.75 mile southeast of the IH 20 crossing of the Clear Fork of the Trinity River, approximately 2.5 miles due west of the intersection of IH 20 and FM Road 1187 in Parker County. The effluent is discharged into an unnamed tributary of the Clear Fork of the Trinity River; thence to the Clear Fork of the Trinity River in Segment 0831 of the Trinity River Basin.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 31, 1989, 1:51 p.m.

TRD-8902903

Regional Meetings

Meetings Filed March 30, 1989

The Archer County Appraisal District, Board of Directors, will meet at the Archer Appraisal District Office, 211 South Center, Archer City, on April 12, 1989, at 4:30 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Dawson County Central Appraisal District, Board of Directors, met at 920 North Dallas Avenue, Lamesa, on April 5, 1989, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Wise County Appraisal District, Board of Directors, will meet in the Boardroom, 206 South State Street, Decatur, on April 13, 1989, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-8902844

Meetings Filed March 31, 1989

The Barton Springs/Edwards Aquifer Conservation District, Regular Monthly Board of Directors Meeting, was held in District Office 1124-A Regal Row, Austin, on April 3, 1989, at 7 p.m. Information may be obtained from Bill Couch, 1124-A Regal Row, Austin, Texas 78748.

The Dallas Area Rapid Transit, Board of Directors, met at the Richardson Civic Center, North Central Expressway and Arapaho Road, Dallas, on April 4, 1989, at 9 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The East Texas Council of Governments, JTPA Board of Directors, met at the Ramada Inn, Kilgore, on April 6, 1989, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas, (214) 984-8641.

The Education Service Center Region VI, Executive Committee, will meet in the Del Lago Conference Center, Montgomery, on April 13, 1989, at noon. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Education Service Center Region VII, Board of Directors, will meet at the Holiday Inn, Henderson, on April 20, 1989, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas, (214) 984-3071.

The Garza County Appraisal District, Board of Directors, will meet at the Appraisal Office, Courthouse, Post, on April 13, 1989, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on April 7, 1989, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75603, (214) 759-0015.

The High Plains Underground Water Conservation District Number 1, Board of Directors, will meet in the Conference Room, 2930 Avenue Q, Lubbock, on April 11, 1989, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Jack County Appraisal District, Board of Directors, met in the Los Creek Office Building, 216-D South Main, Jacksboro, on April 3, 1989, at 7 p. m. Information may be obtained from Treva Epperson or Dorra Hartzell, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Lower Colorado River Authority, Board of Directors, met at 3700 Lake Austin Boulevard, Austin, on April 4, 1989, at 2 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The Mason County Appraisal District, will meet at 206 Ft. McKavitt Street, Mason, on April 12, 1989, at 10 a.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

TRD-8902862

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Meetings Filed April 3, 1989

The Canadian River Municipal Water Authority, Board of Directors, will meet at the Plainview Country Club, 2902 West Fourth Street, Plainview, on April 12, 1989, at 10:30 a.m. Information may be obtained from John C. Williams, Box 99, Sanford, Texas 79078, (806) 865-3325.

The Carson County Appraisal District, Board of Directors, will meet at 102 Main, Panhandle, on April 12, 1989, at 9 a.m. Information may be obtained from Dianne Lavake, Box 970, Panhandle, Texas 79068.

The East Texas Council of Governments, Executive Committee met in ETCOG Offices, Kilgore, on April 6, 1989, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas, (214) 984-8641.

The Erath County Appraisal District, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on April 11, 1989,

at 9 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Hunt County Tax Appraisal District, Appraisal Review Board, met in the Boardroom, Hunt County Tax Appraisal District, 4801 King Street, Greenville, on April 6, 1989, at 9 a.m. Information may be obtained from Joe P. Davis or Linda S. Haynes, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Kendall County Appraisal District, Appraisal Review Board, will meet at 207 East San Antonio Street, Boerne, on April 10, 1989, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Rio Grande Valley Municipal Water Authority, will meet at Expressway 83, East Stewart Place Road, Harlingen, on April 16, 1989, at noon. Information may be obtained from Ebsel Lantz, 3505 Boca Chica, Suite 303, Brownsville, Texas 78520, (512) 541-1660.

The Upshur County Appraisal District, Board of Directors, will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, on April 10, 1989, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

TRD-8902953

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Meeting Filed April 4, 1989

The Brazos Valley Development Council, Executive Committee will meet in Suite 2, 3006 East 29th Street, Bryan, on April 13, 1989, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277.

TRD-8902987

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Name: Alison Renee Thedford

Grade: 11

School: Plano High, Plano

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Contested Case Hearing

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not a special permit should be issued to Capitol Aggregates, Inc. (the applicant), to construct an asphaltic concrete plant near Leander, Williamson County.

Time and Place of Hearing. The examiner has set the hearing to begin at 10 a.m. on May 23, 1989, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin.

What the Applicant Must Prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, §13, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. The applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the requirements of the Texas Clean Air Act, (the Act), Texas Civil Statutes, §3.27, Article 4477-5, and TACB §116.7. These requirements include that the proposed facility (1) will emit less than 250 tons of carbon monoxide or nitrogen oxides or 25 tons of any other air contaminant (except for carbon dioxide, water, nitrogen, methane, ethane, hydrogen and oxygen), (2) applicable TACB and federal regulations, and (3) will use best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions.

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB staff. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to Hearings Examiner, Cindy Hurd and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723 by 5 p.m. on April 24, 1989. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. The examiner will make a final decision on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference on May 9, 1989, at 10 a.m. at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin. At this conference, the examiner will consider any motions of the parties but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those who plan to

attend are encouraged to telephone the TACB Central Office in Austin at (512) 451-5711 extension 350, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 350, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Application and TACB Rules. Information about the application and copies of the TACB's rules and regulations are available at the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723, and at the Office of the Leander City Secretary, 200 West Willis, Leander, Texas 78641.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§3.15, 3.16, 3.17, 3.27, and 3.271, and TACB §§103.11(3), 103.31, and 103.41.

Issued in Austin, Texas on March 28, 1989.

TRD-8902904 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: March 31, 1989

For further information, please call (512) 451-5711

Texas Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On March 27, 1989, the banking commissioner received an application to acquire control of TB&T Bancshares, Inc., Brownsville, by George R. Farish, Houston.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on March 28, 1989.

TRD-8902822 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 29, 1989

For further information, please call (512) 479-1200

Notice of Hearing

The hearing officer of the State Banking Department will

conduct a hearing for application for license under the Sale of Checks Act by Fil-Remit, Houston. The hearing will be held on May 10, 1989, at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. A copy of this notice, and all other pleadings must be sent to each party to the hearing. All parties appearing at the hearing are requested to provide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on March 31, 1989.

TRD-8902922 Ann Graham
General Counsel
Texas Department of Banking

Filed: March 31, 1989

For further information, please call (512) 479-1200



Notice of Postponement of Hearing

The April 20, 1989, hearing on the proposed new 7 TAC §25.15, concerning investments for prepaid funeral trust funds, has been postponed and will be rescheduled for

May 1, 1989, at 9 a.m. The proposed rules were published in the March 28, 1989, edition of the *Texas Register*.

This hearing will be held to receive comments on the proposed rule. Anyone wishing to present oral comments at the hearing should file written comments and a notice of intention to present oral comments no later than April 20, 1989. The proceeding does not represent a contested case hearing. The hearings officer will impose reasonable time limits on comments.

Additional information may be obtained from: Ann Graham, General Counsel, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78705-4294, (512) 479-1200.

Issued in Austin, Texas on March 31, 1989.

TRD-8902923 Ann Graham
General Counsel
Banking Department of Texas

Filed: March 31, 1989

For further information, please call (512) 479-1200



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).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ /Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/03/89-04/09/89	18.25%	18.00%
Monthly Rate Art. 1.04(c) ⁽¹⁾	04/01/89-04/30/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/89-06/30/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	04/01/89-06/30/89	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	04/01/89-06/30/89	16.81%	N.A.

Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	04/01/89-06/30/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	04/01/89-06/30/89	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/89-06/30/89	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	04/01/89-04/30/89	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 March 27, 1989.

TRD-8902843 Al Endsley
Consumer Credit Commissioner

Filed: March 30, 1989

For further information, please call: (512) 479-1280

◆ ◆ ◆

Texas Education Agency Request for Proposals

The Texas Education Agency requests proposals for automation of the standard application system used to flow federal and some state funds to local education agencies. The automated system will be modular in structure and used throughout the entire annual fund flow cycle, beginning with notification of entitlement or planning amount to the local education agency, and extending through all subsequent steps, including submission of application by local education agency, Texas Education Agency approval of application, notification to local education agency of Texas Education Agency approval of application, alloca-

tion of funds, submission and approval of any subsequent amendment, submission and processing of expenditure reports, and reallocation of funds.

Entities with experience, knowledge, and skills needed to produce an automated system of this type are encouraged to submit proposals. Development of the system is scheduled to begin May 15, 1989, and be completed by September 29, 1989. Cost of the project may not exceed \$100,000. Selection of the contractor will be based on the quality and appropriateness of the proposed system and ability to produce the desired system during the contract period. If all steps in the annual fund flow cycle are not proposed to be fully developed during the contract period, then the proposal must include a conceptual overview of how modules would be designed to complete the system.

To obtain a complete copy of the request for proposal, contact the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9304. Proposals may be delivered by mail or in person to the Document Control Center at the Texas Education Agency. To be considered for funding, proposals must be received no later than 5 p.m. on Friday, April 28, 1989.

Issued in Austin, Texas on March 30, 1989.

TRD-8902860

W.N. Kirby
Commissioner of Education

Filed: March 30, 1989

For further information, please call (512) 463-9212

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**State Committee of Examiners for
Speech-Language Pathology and
Audiology**

Correction of Error

The State Committee of Examiners for Speech-Language Pathology and Audiology submitted adopted amendment which contained errors as published in the March 14, 1989, issue of the *Texas Register* (14 TexReg 1368).

The title to Part XXXII should read: "Part XXXII. State Committee of Examiners for Speech-Language Pathology and Audiology"

The statutory authority for the adopted amendments in each of the six affected subchapters in chapter 741 should read: "The amendment is adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act."

◆ ◆ ◆
**Texas Feed and Fertilizer Control
Service**

Correction of Error

The Texas Feed and Fertilizer Control Service submitted a proposed section which contained an error as submitted by the service in the March 24, 1989 issue of the *Texas Register* (14 TexReg 1503).

The information contact for §65.52 should read: "For further information, please call: (409) 845-1121."

◆ ◆ ◆
**Governor's Office of Budget and
Planning**

**Amendment to Consultant Proposal
Request**

This amendment is in reference to the consultant proposal request (CPR) published in the March 24, 1989, issue of the *Texas Register* (14 TexReg 1547). The CPR solicits proposals from qualified engineering firms, public agencies, or individuals to provide on-site energy evaluation services for Texas school districts.

The closing date for accepting proposals is amended to read as follows: Proposals should be sent by registered mail or by courier and be received no later than 5 p.m. on April 14, 1989. Proposals received after this time will not be considered. Contractor selection will be made on or before April 28, 1989.

Issued in Austin, Texas on March 30, 1989.

TRD-8902831

Ron Lindsey
Director
Governor's Office of Budget and Planning

Filed: March 30, 1989

For further information, please call (512) 463-1931

◆ ◆ ◆
Texas Department of Health
Correction of Error

The Texas Department of Health submitted an adopted section which contained an error as submitted by the department in the March 14, 1989 issue of the *Texas Register* (14 TexReg 1370).

In the preamble to §111.3, the first paragraph should read: "The Texas Department of Health adopts new §111.3, without changes to the proposed text as published in the December 23, 1988 issue of the *Texas Register* (13 TexReg 6318)."

◆ ◆ ◆
Texas Department of Human Services
Request for Proposals

The Texas Department of Human Services (TDHS), Region 5, is soliciting proposals for three brokerage contracts to process service provider applications, manage billing processes, and monitor service delivery for TDHS approved providers of evaluation and treatment services for the department's Child Protective Services Families and Children's Division.

Geographic Areas: Brokers will be selected to provide broker services for the following geographic areas: Area A-Dallas County; Area B-Tarrant, Palo Pinto, Erath, Parker, and Hood Counties; and Area C-Outlying to include Cooke, Fannin, Wise, Denton, Collin, Navarro, and Ellis Counties.

Funding Limitation: Based on a brokers fee not to exceed 10% of billed, delivered services, estimated allocations for the initial contract period are: Area A, estimated service allocation \$614,133, estimated brokerage fee amount of \$60,000; Area B, estimated service allocation \$473,278, estimated brokerage fee amount \$46,000; and Area C, estimated service allocation \$286,793, estimated brokerage fee amount \$30,000. The final contract allocations are contingent on TDHS Region 5 finalized annual allocation.

Method of Payment: After services are delivered, payment will be made by TDHS fiscal division on a monthly basis after submitting the following forms: Form 4116-State of Texas Purchase Request Voucher; and Form 2016-Report of Purchased Delivered Services.

Contract Period: The initial contract period will be September 1, 1989-August 31, 1990, with a regional option to renew thereafter on a yearly basis through August 31, 1993.

Limitations on Who May Submit: Individuals (sole proprietors), partnerships, private agencies or private corporations, profit or nonprofit, are eligible to submit proposals.

Obtaining Procurement Package: For a copy of a request for proposal package, call or write Gale Berry or Bernie Sorrels, 631 106th Street, P.O. Box 5128, Arlington, Texas 76011, (817) 640-5090. The request for proposal package will be available from Thursday, April 20, 1989, up to submittal date. Proposals may be submitted by certified mail or in person at 631 106th Street, Child Protective Services for Families and Children's Division. Proposals must actually be received at 631 106th Street,

Arlington, Texas 76011, Child Protective Services Families and Children's Division by 4 p.m. Monday, May 15, 1989, or they will be considered non-responsive.

Issued in Austin, Texas, on April 3, 1989.

TRD-8902978 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Filed: April 3, 1989

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

◆ ◆ ◆
**Texas Department of Mental Health
and Mental Retardation**

**Request for Applications for the
TDMHMR Advocacy Program**

Applications are being accepted for implementing an advocacy program for the Texas Department of Mental Health and Mental Retardation. The mission of the program, as established by the charter, is to ensure that individuals at Austin, Denton, Fort Worth, and San Antonio State Schools have advocates. The advocates will advocate solely for the fulfillment of the needs of their assigned individuals, help them grow and develop, assist in planning and monitoring implementation of habilitation plans, represent the individuals; interest, and protect their rights and civil liberties.

The charter requires a full time director and four full time employees. There will be a full time employee located at each of the four schools, with support staff as necessary. The responsibility of recruiting, training, and supervising independent volunteer advocates is assumed by the recipient of the contract.

The targeted implementation date is September 1, 1989. A two year contract will be awarded for this program. Applicant's budgets must not exceed \$500,000, and must be submitted with application. If the offeror is a corporation, the officer must either be chartered with the Secretary of State or be authorized by the Secretary of State to transact business within the state, and must not be delinquent in payment of state franchise taxes.

Interested offerers can obtain a copy of the charter for the Advocacy Program and an application with submission instructions by writing to: Mark S. Johnston, Mental Retardation Services, Texas Department of Mental Health

and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or by calling: (512) 465-4507.

Offerer's applications must be received and date stamped by TDMHMR by 4 p.m., June 1, 1989. Any proposal received after this date and time will not be considered.

Issued in Austin, Texas on March 31, 1989.

TRD-8902918 Dennis Jones
Commissioner
Texas Department of Mental Health and
Mental Retardation

Filed: March 31, 1989

For further information, please call (512) 465-4591

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**Texas Water Development Board
Notice of Intent**

Pursuant to the Federal Water Pollution Control Act, §602(b)(6) and §511(c)(1) as amended, and 31 Texas Administrative Code, §375.35, the Texas Water Development Board gives notice of intent to prepare an Environmental Impact Statement (EIS) for proposed wastewater collection and treatment system improvements to facilities owned and operated by the Cameron County Fresh Water Supply District Number 1.

In order to consult and coordinate with federal, state, and local agencies and other interested parties, public or private, to determine the scope of the EIS, the Texas Water Development Board will convene a scoping meeting at 6 p.m., on May 22, 1989, at the Port Isabel High School Auditorium, State Highway 100, Port Isabel.

To ensure the full range of issues related to the proposed project are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Written comments and questions regarding the proposed action and the EIS should be directed to Mr. Hayden Whitsett, Construction Grants Division, The Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Issued in Austin, Texas on March 28, 1989.

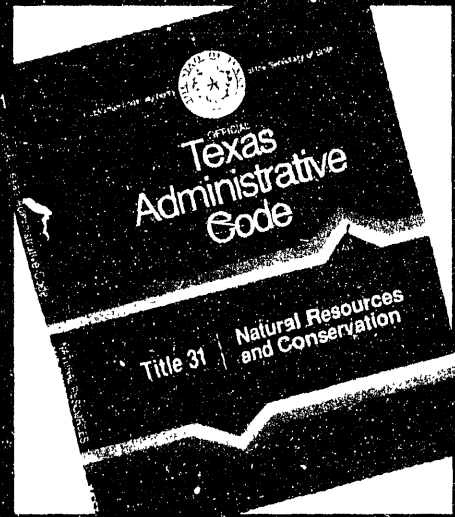
TRD-8902821 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: March 29, 1989

For further information, please call (512) 463-7855

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