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Texas Register

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Texas Register

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Governor—appointments, executive orders, and proclamations

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

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

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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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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Director
Dan Procter

Assistant Director
Don Wright

Documents Section Supervisor
Patty Farris

Documents Editors
Lisa Bruff
Janlene Hagel

Open Meetings Clerk
Brenda J. Kizze

Production Section Supervisor
Ann Franklin

Production Editor
Sharon Menger

Typographers
Hermias Roberts
Madeline Christer

Circulation/Marketing
Richard Kalus
Roberta Knight

TAC Editor
Dana Blanton

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43 TAC §§1.100-1.111—5350

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.

Appointments Made September 26, 1989

To be a member of the Texas Water Commission for a term to expire August 31, 1991: Cliff Johnson, Route 6, Box 6965, Palestine, Texas 75801. Mr. Johnson will be filling the unexpired term of John O. Houchins of Houston, who resigned effective October 2, 1989.

To be a member of the National Guard Armory Board for a term to expire April 30, 1995: Brigadier General Reynaldo Sanchez, 1704 Larry Hinson, El Paso, Texas 79936. General Sanchez will be replacing Major General Charles H. Kone who retired.

To be a member of the Finance Commission of Texas for a term to expire February 1, 1994: Scott Barnett Smith, #1 Ridgeway Circle, Denison, Texas 75020. Mr. Smith is being appointed to a new position pursuant to Senate Bill 607, 71st Legislature, Regular Session.

To be a member of the Branch Pilot for the Sabine Bar, Pass and Tributaries for a term to expire September 1, 1993: T. R. Morgan, 110 Ridgeland, Beaumont, Texas 77706. Captain Morgan is being reappointed.

To be a member of the Branch Pilot for the Sabine Bar, Pass and Tributaries for

a term to expire September 1, 1993: Robert H. Welch, 715 South Avenue, Port Neches, Texas 77651. Captain Welch is being reappointed.

To be a member of the Branch Pilot for the Sabine Bar, Pass and Tributaries for a term to expire September 1, 1993: H. E. Weaver, 3830 Chandelle, Port Arthur, Texas 77642. Captain Weaver is being reappointed.

Issues in Austin, Texas, on October 2, 1989.

TRD-8909220

William P. Clements, Jr.
Governor of Texas

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-1102 (RQ-1645). Request from Hilary B. Doran, Jr., Chairman, Texas Racing Commission, Austin, concerning whether the Texas Racing Commission may adopt rules regarding the regulating of simulcasting.

Summary of Opinion. Because Texas Civil Statutes, Article 179e, the Texas Racing Act, does not itself authorize an association to engage in pari-mutuel wagering on simulcast events, the Texas Racing Commission is without authority to promulgate rules regulating simulcast events.

TRD-8909244

JM-1103 (RQ-1758). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning which state agency is responsible for interpreting

the provisions of Insurance Code, Article 5.33A, regarding homeowners premium reductions and related questions.

Summary of Opinion. Of the two agencies, the State Board of Insurance and the Commission on Law Enforcement Officer Standards and Education, the State Board of Insurance has the primary responsibility for interpreting the provisions of the Insurance Code, Article 5.33A, relating to reductions in homeowners' insurance premiums on property meeting certain security specifications. An exterior door may have glass panels and still qualify under the provisions of Article 5.33, §6, if the property meets the other specifications provided for in that section.

TRD-8909243

Requests for Opinions

RQ-1826. Request from Randy M. Phillips, Lipscomb County Attorney, Booker, concerning authority of a county to pay its employees who are indebted to the county for property taxes.

RQ-1827. Request from A. W. Pogue, Commissioner, State Board of Insurance, Austin, concerning procedure to be followed by the State Board of Insurance in placing an insurance company in conservation under the Insurance Code, Article 21.28-A.

RQ-1828. Request from Jerry P. Cunningham, Chairman, Texas Commission on Alcohol and Drug Abuse, Austin, concerning applicability of Texas Civil Statutes, Article 5561cc, to local substance abuse treatment facilities or court residential treatment facilities which are operated by a contracted with by local adult probation departments.

TRD-8909242

Proposed Sections

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

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

TITLE 1.

ADMINISTRATION

Part IV. Office of Secretary of State

Chapter 81. Elections

Political Parties

• 1 TAC §§81.100-81.133

(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 Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Secretary of State proposes the repeal of §§81.100-81.131, concerning the financing of the 1988 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of the primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

Tom Harrison, special assistant for elections, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Harrison also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to allow for the adoption of §§81.100-81.132, relating to the financing of the 1990 primary elections. There will be a possible economic cost to the state and county chairmen of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, c/o Tom Harrison, Special Assistant for Elections, P.O. Box 12060, Austin, Texas 78711.

The repeals are proposed under the Texas Elections Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the applications, interpretations, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

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 October 4, 1989.

TRD-8909277

Pete Wassdorf
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 463-5701

◆ ◆ ◆
The Office of the Secretary of State proposes new §§81.100-81.132, concerning the financing of the 1990 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of the primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

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

Mr. Harrison, 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 proper conduct of the 1990 primary elections by party officials with the aid of state money appropriated for that purpose. There will be a possible economic cost to the state and county chairmen of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, c/o Tom Harrison, Special Assistant for Elections, P.O. Box 12060, Austin, Texas 78711.

The new sections are proposed under the Texas Elections Code, §31.003 and §173.006, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

§81.100. Payable Costs. In accordance with the Texas Election Code, §173.001, only expenses necessary and directly related to the conduct of primary elections are payable from primary funds. Political expenses, those expenses which would be incurred if there were no election, and expenses for any activity forbidden by statute or rule are not primary election costs subject to primary fund reimbursement. Examples of non-payable expenses include, but are not limited to: expenses incurred in connection with a convention of a political party, all costs associated with voter registration drives and get out the vote campaigns. Pursuant to the Texas Election Code, §173.031, primary funds include filing fees, contributions to the primary fund, state appropriations, and other income earned by the fund. Any refund of money expended from the primary fund is also part of the primary fund.

§81.101. Primary Administrator. In counties with more than 100,000 registered voters, county chairmen may employ a primary administrator for the period beginning on December 1 preceding the primary elections and ending on the last day of the month in which the last primary election is held (general or runoff primary). If the county executive committee contracts with the county election officer to perform election services normally performed by a primary administrator pursuant to the Texas Election Code, Chapter 31, Subchapter D, a primary administrator may not be employed without the prior written approval of the Secretary of State. The maximum salary payable from the primary fund to a primary administrator shall be \$2,000 per month, and such compensation must reasonably reflect the duties and responsibilities assigned to the administrator. No payment from the primary fund is allowable for transportation or other personal expenses incurred by the primary administrator in the performance of his duties. A written description of the primary administrator's job, hours, duties, responsibilities, and services must accompany the request for the employment of the primary administrator and the General Primary Election Cost Estimate. If the county executive committee wishes to employ both a primary administrator and the county elections officer pursuant to an election services contract, such written description of the primary administrator's job, duties, responsi-

bilities, and services must be submitted with the request to employ the primary administrator and the proposed election services contract.

§81.102. Other Salaried Personnel. Salaries or wages of personnel necessary to aid in the conduct of the primary elections are payable from the primary fund for the period beginning on December 1 preceding the primary elections and ending on the last day of the month in which the last primary election is held (general or runoff primary election). Such personnel may not be employed without the prior written approval of the secretary of state. Compensation for each salaried person performing clerical or secretarial duties may not exceed \$1,500 per month. Compensation for each salaried person performing supervisory duties related to the conduct and administration of the primary elections may not exceed \$1,800 per month. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid in the locale for the same or similar services. A list of necessary personnel must accompany the request for the employment of personnel to be paid from the primary fund transmitted to the secretary of state and must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. This information must also be attached to each finance report. Copies of all quarterly 941 returns filed with the Internal Revenue Service must be transmitted to the secretary of state along with the Final Primary Election Cost Report.

§81.103. Contracts for Labor. All contracts for labor necessary for the conduct of the primary elections must be in writing. Each such contract shall include the name of the individual, the duties, job, or services to be performed, period of employment, and the rate or fee to be paid. The fee or rate must be reasonable for the services rendered and must reflect the fee or rate prevailing in the locale for the same or similar services. Contracts for services costing over \$500 must be approved in writing by the secretary of state before money from the primary fund may be expended under the terms of such contracts. The contract shall be signed by both the chairman and the contractor. Copies of all contracts for labor shall be transmitted to the secretary of state with the next Primary Election Cost Estimate or with the Final Primary Election Cost Report.

§81.104. Election Services Contract. The Model Election Services Contract prescribed by the secretary of state is adopted by reference. Copies of the contract may be obtained from the Elections Division of the Secretary of State's Office, P.O. Box 12060,

Austin, Texas 78711, or by calling, toll-free, 1-800-252-8683. The model contract must be used in an agreement for election services pursuant to the Texas Election Code, Chapter 31, Subchapter B, between the county executive committee and the county elections officer, unless otherwise authorized by the secretary of state. Any modification of an election services contract is not binding until approved in writing by the secretary of state, and execution of the contract is not completed until written approval is obtained. A contract may not allow for reimbursement for training of election workers or providing materials published by the secretary of state. Salaries of personnel regularly employed by the county election officer may not be paid from or reimbursed to the county from the primary fund.

§81.105. Employee Fidelity Bond. The purchase of an employee fidelity bond for those persons whose responsibilities include the receipt and/or expenditure of primary funds is required and payable from the primary fund. The amount of the bond is based upon the anticipated total amount of money the employee is expected to handle for the period beginning December 1 before the primary elections and ending the last day of the month in which the final primary election (either general or runoff) is held. The maximum anticipated amount of money handled by any such employee for purposes of determining the cost of the bond shall be \$50,000. Chairmen are not required to post such bonds.

§81.106. Office Rent. Office rent is payable from the primary fund for the period beginning on December 1 preceding the primary elections and ending on the last day of the month in which the last primary is held (general or runoff primary election). A copy of the lease agreement shall be transmitted to the secretary of state along with the Primary Election Cost Estimate. Office rent shall not exceed the fair market rate for office space in the locale. Any change in a lease agreement and an explanation of such change shall be transmitted to the secretary of state with the next required primary election estimate or report. If the home or business of a party officer is used as an office in connection with the conduct of the primary elections, primary funds shall not be paid for the rental of such office unless no other such office is established for required activity related to the conduct of the primary elections. Only rental of the portion of the home or business regularly and exclusively used for primary election purposes may be paid from the state primary fund. The amount of allowable rental is determined by multiplying the percentage of the home or business used as such office by the rental or mortgage payment for the applicable period. If no rental or mortgage payment is paid, then the fair market rental of the home or business is to be used in the calculations.

§81.107. Office Equipment. Office equipment (including telephone equipment) necessary for the administration of the primary elections may be leased for the period beginning December 1 preceding the primary and ending on the last day of the month in which the last primary is held (general or runoff primary election).

§81.108. Office Supplies and Copies of the Texas Election Code. Purchases of office supplies necessary for the administration of the primary elections are payable from the primary fund. The expenditure for purchase of two copies of a paperback version of the Texas Election Code is authorized from the primary fund.

§81.109. Telephone and Postage Charges. Telephone costs (including rental and installation charges for no more than two telephone lines) and postage charges which are incurred during the period from December 1 preceding the primary elections and ending on the last day of the month in which the last primary is held and which are related to the administration of the primary elections, are payable from the primary fund. Any cost not directly attributable to the conduct of the primary elections is not payable from the primary fund.

§81.110. Competitive Quotations for Services or Products. Unless prior approval of the secretary of state is obtained, chairmen must purchase all services and products using competitive quotations from two or more sources if more than one source is available in the state. Documentation or explanation of the lack of availability of competitive quotations must be submitted with the General Primary Election Cost Estimate. This rule does not apply to petty cash expenditures of \$100 or less.

§81.111. Bank Account for Primary Fund Deposits and Expenditures. Chairmen shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds. Primary funds shall not be commingled with any other fund or account.

§81.112. Deposit of Currency. All filing fees and contributions received in currency shall be deposited intact into the primary fund.

§81.113. List of Candidates and Filing Fees. A complete list of candidates, including the offices sought and amount of filing fees received from each candidate, shall be transmitted to the secretary of state by January 12, 1989.

§81.114. Interest on Loans. Interest on loans of money to cover operating costs until the receipt of primary funds approved by the secretary of state is not payable from the primary fund. Such "start-up" money should be obtained from the secretary of state by filing a General Primary Election Cost Estimate.

§81.115. Signature on checks; Authorization of Primary Fund Expenditures. All checks written on the primary fund shall be personally signed by either the chairman or a bonded agent for the chairman, except that payroll checks and checks to sole source vendors must be signed by the chairman. All primary fund expenditures shall be authorized by the chairman.

§81.116. Payee of Checks Restricted to an Entity or Person. Except for the check written to establish a petty cash fund, no check written on the primary fund shall be made payable to cash or bearer. All checks other than the check written to establish a petty cash fund shall be made payable to an entity or person.

§81.117. Form of Payments; Petty Cash Fund; Documentation of Petty Cash Transactions. All payments from the primary fund shall be made by check, except that chairmen may establish a petty cash fund not exceeding \$100 for minor purchases and payments. Complete documentation of all petty cash transactions shall be kept.

§81.118. Documentation of Expenses/Record Keeping. Copies of all bills, invoices, contracts, petty cash receipts, and any other related materials supporting primary election costs shall be transmitted to the secretary of state upon request. Such records must be preserved for a period ending not later than one calendar year from July 1 following the primary elections, but if court action or an official investigation is pending, they shall be preserved until the termination of such court action or official investigation.

§81.119. Legal Expenses. No legal expenses may be paid from the primary fund without the prior written approval of the

secretary of state. Before entering into a contract for legal services anticipated to be paid from primary funds, the chairman must contact the secretary of state and obtain a determination that such legal services are payable from the primary fund. Such determination must be verified in writing and submitted to the chairman.

§81.120. Transfer of Records to New Chairman. The chairman is responsible for the complete and orderly transfer to his successor or the appropriate county committee of all records required by law in connection with the primary election. If a vacancy occurs in the office of chairman, the executive committee shall appoint a custodian of these records until a successor is appointed or elected.

§81.121. General Primary Election Cost Estimate Transmitted to the Secretary of State Prior to the Close of the Regular Filing Period. If the General Primary Election Cost Estimate is transmitted to the secretary of state prior to the close of the regular filing period, the chairman shall estimate the amount of filing fees to be collected. The amount of estimated filing fees shall be reported as a financing source on the General Primary Election Cost Estimate. When the General Primary Election Cost Estimate is transmitted to the secretary of state after the close of the regular filing period, the chairman shall report the actual amount of filing fees received as a financing source on the General Primary Election Cost Estimate.

§81.122. Returning Surplus Funds. Any surplus remaining in a primary fund account after payment of approved expenses shall be remitted to the secretary of state, primary fund account, with the Final Cost Report, but not later than July 1 following the primary election, unless otherwise provided by the secretary of state.

§81.123. County Election Officer Not to Receive Compensation under Election Services Contracts for 1990 Primary Election. An election services contract for the 1990 primary elections may not provide for any salary or compensation of the county election officer for the performance of any statutory duty or service.

§81.124. Transportation Costs. No payment from the primary fund is permitted for transportation or other personal expenses incurred by the chairman or party employees in the performance of their duties.

§81.125. Compensation For Services at the Polling Places. For the 1990 general and runoff primary elections, the hourly compensation for election officers shall not exceed \$5.00.

§81.126. Compensation for Delivering Election Records and Supplies. Compensation of the election judge or clerk who delivers the election records, equipment, and unused supplies after the 1990 general and runoff primary elections may not exceed \$15 per physical polling place location for each election.

§81.127. Reimbursement for Election Schools. Reimbursement for training of election workers or providing materials published by the secretary of state may not be made from the primary fund. Persons attending election schools may not be compensated from primary funds.

§81.128. Unemployment Taxes. No payment may be made from the primary fund for penalties arising from failure to pay the employer portion of employment taxes.

§81.129. Estimating Voter Turnout.

(a) County chairmen should use the following formula as a starting point in determining the estimated voter turnout for the 1990 primary elections. The result achieved from utilizing the formula should be adjusted for other factors likely to affect turnout locally. Each county chairman should determine whether the local political situation suggests a higher turnout, and, if so, his or her estimate should be adjusted to take such factors into account. In presenting such estimate, the chairman should present those factors and his or her analysis of those factors, and the secretary of state will evaluate such higher estimates based on the factors and analysis on a case-by-case basis. The formula for estimating turnout for the 1990 primary elections is:

$$A \times B + C = D$$

Where: A = the percentage of voter turnout for governor or another statewide race in the 1986 party primary (percentage is the number of registered voters divided by the

sum of all votes cast for all candidates for governor or other statewide office in the 1986 primary).

B = the number of registered voters as of December 1989.

C = 25% of the number resulting when you multiply A x B.

D = Preliminary Estimated 1990 Turnout.

(b) After estimating the voter turnout for each precinct, county chairmen should then use the guidelines set forth in §§81.130-81.132 to determine the necessary physical requirements (i.e., ballots, election judges and clerks, voting devices or machines) for each precinct. After estimating the physical requirements for each precinct, county chairmen should combine the precinct data to arrive at the total estimated physical requirements of the primary election countywide. This may then be used to estimate the election costs.

§81.130. Number of Paper or Electronic Voting System Ballots per Voting Precinct. The minimum number of ballots furnished to each voting precinct for a primary election shall be equal to the esti-

mated voter turnout as determined by the county chairman pursuant to §81.129 of this title (relating to Estimating Voter Turnout). In no event shall the minimum number of ballots be less than the number arrived at by application of the numerical formula. The number of ballots provided may exceed the estimated number of voters determined by the numerical formula, since the number of ballots provided should never be so low as to impede the voting process or to jeopardize the rights of voters. The maximum number of ballots ordered may equal the total number of registered voters of the precinct if such a number may be substantiated.

§81.131. Number of Election Workers per Voting Precinct. The following table must be used to determine the number of election workers allowable for each precinct. The

minimum number of clerks in a primary election is two, for a total of three workers, including the presiding judge. See the Texas Election Code, §173.008(c). If the number of election clerks allowed in a precinct is greater than two, the presiding judge may utilize one or more of the additional clerk positions to hire more clerks for shorter work periods. For example, instead of hiring one clerk for a 12-hour shift, the judge could hire three clerks for four-hour shifts, beginning at 4 p.m. and ending at 8 p.m. Clerks may be assigned to work for periods ending before any manual count or examination of ballots begins. Therefore, if no counting or examination of ballots has occurred, unnecessary clerks may be excused early, preventing unwarranted personnel expenses.

Number of Election Workers

Per Voting Precinct

(Includes one judge and one alternate judge who serves as a clerk)

| Estimated Turnout Per Voting Precinct | Paper Ballot | Punch Card, Optical Tabu- lators and Voting Machine |
|---------------------------------------------|--------------|--------------------------------------------------------------|
| 200 or fewer | 3 | 3 |
| 201 - 400 | 5 | 4 |
| 401 - 700 | 6 | 5 |
| 701 - 1100 | 8 | 6 |
| 1101 or more | 12 | 8 |

§81.132. Number of Voting Machines, Devices and/or Precinct Ballot Counters per Voting Precinct.

(a) The following table must be used to determine the number of voting machines, precinct ballot counters, and

punch card voting devices allowable for each precinct.

**Number of Voting Machines,
Devices and/or Precinct Ballot Counters**

| Estimated Voter Turnout Per Voting Precinct | Voting Machines | Punch- Card Devices | Precinct Ballot Counters (Punch-Card or Optical Tabulators) |
|---------------------------------------------------------|--------------------|---------------------------|----------------------------------------------------------------------------|
| 300 or less | 2 | 2 | 1 |
| 301 - 600 | 2 | 4 | 1 |
| 601 - 900 | 2 | 6 | 1 |
| For each additional: | | | |
| 300 voters | 1 | N/A | N/A |
| 350 voters | N/A | 1 | N/A |

(b) In counties where voting machines are to be used, the county chairman should make a special assessment of whether the number of voting machines calculated according to this formula is adequate and make provisions both in his cost estimate and his actual procurement of voting machines accordingly.

§81.133. Application of Rules. These rules apply to cost estimates by the chairmen of both state and county executive committees.

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 October 4, 1989.

TRD-8908278

Pete Wassdorf
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 463-5701

◆ ◆ ◆
**TITLE 34. PUBLIC
FINANCE**

**Part VII. State Property
Tax Board**

**Chapter 155. Tax Record
Requirements**

• **34 TAC §155.45**

The State Property Tax Board proposes new §155.45, concerning adoption of a form for a person to use in requesting appraisal of his inventory for property tax purposes as of September 1 of the year preceding the tax year.

House Bill 432, 71st Legislature, 1989, requires a property owner to file an application with the chief appraiser requesting September 1 appraisal.

Sands L. Stiefer, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Stiefer 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 provision to taxpayers of a uniform method for requesting September 1 inventory appraisal. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-

6585.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe forms for use in administering the property tax system.

§155.45. Application for September 1 Inventory Appraisal.

(a) All appraisal districts shall prepare and make available copies of State Property Tax Board Model Form 23.12 for taxpayers to use in requesting September 1 inventory appraisal.

(b) An appraisal district may substitute a different form for special circumstances if the substitute form has been approved by the executive director.

(c) Model Form 23.12 is adopted by reference. Copies of the form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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 October 2, 1989.

TRD-8909227 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 329-7802

◆ ◆ ◆
**Chapter 161. Valuation
Procedures**

• **34 TAC §161.1**

The State Property Tax Board proposes an amendment to §161.1, concerning the manual for the appraisal of 1-d-1 and 1-d agricultural land. The current section adopts by reference the State Property Tax Board publication, *Manual for the Appraisal of Agricultural Land*. The proposed amendment conforms the manual to reflect new statutory provisions on determining change of use, waiver of special appraisal, and the definition of agricultural use. Other changes concern the classification of agricultural land and deletion of misleading references.

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

Mr. Stiefer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide an updated version of the agricultural manual so taxpayers and public officials can better understand their rights and obligations under the law. 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 Ron Patterson, Executive Director, State Property Tax Board, P.O. Box 15900, Austin, Texas 78781.

The amendment is proposed under the Property Tax Code, §23.41, which requires the board to promulgate rules specifying the methods to apply and the procedures to use in appraising land designated for agricultural use; the Property Tax Code, §23.52, which requires the board to develop and distribute to each appraisal office manuals setting forth methods of appraising and administering special appraisal of open-space agricultural land; and the Property Tax Code, §5.07, which requires the board to prescribe the contents of all forms necessary for the administration of the property tax system, and a uniform records system to be used by all appraisal offices.

§161.1. Valuation of Open-Space and Agricultural Lands. The State Property Tax Board adopts by reference the Manual for the Appraisal of Agricultural Land as amended November 1, 1989 [March 25, 1989], [.] the amendment to be effective on December 1, 1989. This document is published by and available from the State Property Tax Board, 4301 Westbank Drive [9501 North IH 35, P.O. Box 15900], Austin, Texas 78746-6565 [78761].

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 October 2, 1989.

TRD-8909228 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 329-7802.

◆ ◆ ◆
**Chapter 165. Practice and
Procedure**

• **34 TAC §165.143**

The State Property Tax Board proposes new §165.143, concerning a form for an affidavit regarding ex parte contacts that must be filed with an appraisal review board. The new section adopts by reference new model affidavit forms for the chief appraiser and the property owner or owner's agent. These parties are required to file the affidavit under the provisions of House Bill 432, §39, 71st Legislature, 1989.

Sands L. Stiefer, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Stiefer 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 conduction

of appraisal review board hearings, wherein only evidence presented at the hearing will be considered. Chief appraisers and property owners or owners' agents will have access to the standard affidavit forms. 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 Ron Patterson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe all forms necessary for the administration of the property tax system.

§165.143. Affidavit for Protest Hearing.

(a) The chief appraiser or the chief appraiser's designee and a property owner or owner's agent shall sign an affidavit at the protest hearing, stating that they have not communicated or caused an appraisal district employee to communicate with the appraisal review board.

(b) The affidavit need not be in official form. The chief appraiser or the chief appraiser's authorized designee and the property owner or owner's agent, may use the model form adopted by and available from, the State Property Tax Board, or any other form which substantially complies with the form and content of Model Forms 41.66a and 41.66b.

(c) Protest evidence or argument offered at a protest hearing by affidavit without personal appearance pursuant to the Tax Code, §41.45(b), shall be accompanied by the property owner's affidavit required by this section.

(d) The model Affidavit for Protest Hearing Form 41.66a and 41.66b are adopted by reference by the State Property Tax Board. Copies of this form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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 October 2, 1989.

TRD-8909225 Ron Patterson
Executive Director
State Property Tax Board

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 329-7802

TITLE 37. PUBLIC SAFETY AND CORRECTION

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Objective, Mission, and Program

• 37 TAC §1.4

The Texas Department of Public Safety proposes an amendment to §1.4, concerning programs under traffic law enforcement division. Language is deleted in subsection (c), subsection (c)(3) is deleted, and the remaining paragraph, relating to commercial driver training schools and instructors, is renumbered. Effective September 1, 1989, the Commercial Driver Training School Program is transferred to the Central Education Agency due to enactment of Senate Bill 417 by the 71st Texas Legislature.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dudley M. Thomas, chief of traffic law enforcement division, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to make the public aware that the Commercial Driver Training School Program will no longer be the responsibility of the Texas Department of Public Safety. 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 C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Texas Government Code, §411.004(3) which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the commission, shall have the authority to adopt rules necessary for the control of the department.

§1.4. Programs Under Traffic Law Enforcement Division.

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

(c) Drivers license service. The program of the drivers license service is the licensing and postlicense control of drivers and [commercial driver training schools and instructors; also,] limited traffic and general law enforcement. This program consists of the following major activities:

- (1) examination of new drivers;]
- (2) improvement and control of problem drivers;]
- [(3) background investigation and examination of all applicants for licens-

ing as commercial driver training schools and/or instructors;]

(3)[(4)] limited traffic and general law enforcement— secondary.

(d)-(h) (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 September 29, 1989.

TRD-8908238

Joe E. Miner
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 465-2000

Chapter 31. Standards for an Approved Motorcycle Operator Training Course

• 37 TAC §§31.1-31.7

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

The Texas Department of Public Safety proposes the repeal of §§31.1-31.7, concerning standards for an approved motorcycle operator training course. The department is proposing the repeal of these sections due to substantive amendments and adding an additional section. This action is being filed simultaneously with a proposal for new sections concerning standards for an approved motorcycle operator training course. These sections contained provisions for student and teacher qualification and certification, course records, and requirements based on available curriculum.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Henry Palma, Sr., manager of Motorcycle Safety Bureau, has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will be that the department is repealing existing standards for an approved motorcycle operator training course to change language in order to comply with existing statutory amendments. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The repeals are proposed under Texas Civil

Statutes, Article 6701c-4, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

§31.1. Student Qualifications.

§31.2. Teacher Certification.

§31.3. Course Requirements.

§31.4. Course Records.

§31.5. Cancellation of Course or Instructor Approval.

§31.6. Procedures for Student Certification.

§31.7. Riding and Street Skills (RSS) Course Requirements.

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 September 29, 1989.

TRD-8908237

Joe E. Miner
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 11, 1989

For further information, please call: (512) 465-2000

• 37 TAC §§31.1-31.8

The Texas Texas Department of Public Safety proposes new §§31.1-31.8, concerning standards for an approved motorcycle operator training course. The department is proposing new standards for an approved motorcycle operator training course due to substantive amendments, statutory amendments, and adding a new section. This action is being filed simultaneously with a proposal for repeal of existing sections concerning standards for an approved motorcycle operator training course. The new sections promulgate standards for program sponsors, instructors, student admission requirements and verification of course completion by minors, course approval, training motorcycle requirements, hearing requirements, and suspension of program sponsors or instructors.

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

Henry Palma, Sr., manager of Motorcycle Safety Bureau, 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 an upgrading of standards to ensure the public of quality

motorcycle operator training and expansion of the number of training facilities. The anticipated economic cost to persons or small businesses who are required to comply with the section as proposed will be \$55 for fiscal years 1990-1994 for student tuition per course.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 486-2000.

The new sections are proposed under Texas Civil Statutes, Article 5701c-4, which provides the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

§31.1. Program Sponsor.

(a) No individual, association, partnership, corporation, or educational or governmental agency may sponsor or offer training in motorcycle operation to the public for tuition, consideration, or fee without authorization from the department. To qualify for authorization, a sponsor must be approved by the department through a current contract. Approval will be denied unless a sponsor applicant meets the following requirements. The applicant must demonstrate the capacity to register students, collect and account for tuition and state reimbursements, arrange public notice of courses, provide required insurance coverage, submit and maintain all required records, and contract with, schedule, and compensate authorized instructors. The applicant must have or have access to:

(1) a riding area for on-cycle training that is:

(A) a paved surface, including asphalt, concrete, or other all-weather surface of suitable traction; and

(B) large enough to safely accommodate any motorcycle training range approved by the contract, as flat as possible, secure from other vehicular and pedestrian traffic, and free of surface hazards and obstacles;

(2) a secure storage area to protect training motorcycles and other course equipment from the weather;

(3) a classroom that is large enough to seat all students and instructors comfortably and that contains at least one adequate desk or equivalent seating and writing surface for each student, and at least one adequate instructor's desk, table, or podium;

(4) appropriate audiovisual presentation equipment for the classroom, including a chalkboard or equivalent; and

(5) a first aid kit and at least one five-pound ABC fire extinguisher for the riding area.

(b) Approval as a sponsor may be suspended if the sponsor, an instructor under contract with the sponsor, or a member of the sponsoring organization:

(1) fails to continue to meet the requirements of subsection (a) of this section;

(2) is or has been convicted of or placed on probation for any felony, any offenses involving moral turpitude, or tampering with a governmental record, or any of the following offenses involving the operation of a motor vehicle:

(A) criminally negligent homicide;

(B) driving while intoxicated; or

(C) driving under the influence of drugs;

(3) knowingly presents or allows to be presented to the department any false or misleading information relating to a requirement for approval;

(4) permits or engages in any fraud or fraudulent practice concerning an application or, in any action between the applicant or licensee and the public, induces or countenances any fraud or fraudulent practice on the part of an applicant for a driver's license or permit; or

(5) fails to comply with any departmental rule, written policy, or written procedure regarding motorcycle operator training.

(c) The department may construe any probation or conviction, which is for a criminal offense arising from a penal provision of any other state, federal, military, or foreign jurisdiction, to be its closest equivalent under the penal provisions of this state.

(d) Approval may be cancelled if it was based on false or incorrect information or mistake.

(e) Each sponsor must designate a chief school official to be responsible for signing contracts with the department, instructors, or students and for signing any forms required of the sponsor. The chief school official must also be designated by the sponsor to be the custodian of all required records, which shall be kept for a period of at least three years.

(f) If the sponsor is an organization, that organization shall designate one of its members as the chief school official. If the sponsor is an individual, that person shall also be the chief school official.

§31.2. Motorcycle Instructor.

(a) No individual may instruct or offer instruction in motorcycle operation to the public for tuition, consideration, or fee

without authorization from the department. To qualify for authorization, an instructor must be approved by the department. Approval will be denied unless an instructor applicant meets the following requirements. The applicant must agree to teach the training courses in accordance with the department's rules, policies, procedures, and approved curricula and must:

(1) hold a current national certification from the Motorcycle Safety Foundation (MSF);

(2) be a high school graduate or possess a valid GED;

(3) possess a current, valid Texas motorcycle license;

(4) be a licensed driver for at least five years;

(5) meet the driving record evaluation standards established by the Texas Education Agency for school bus drivers;

(6) be free from addiction to the use of alcoholic beverages or drugs; and

(7) be physically competent to conduct classroom and on-cycle instruction.

(b) Approval as an instructor may be suspended if the instructor fails to continue to meet the requirements of subsection (a) of this section or if the instructor, as an individual, fails to meet or continue to meet the requirements of §31.1(b) of this title (relating to Program Sponsor).

(c) Approval may be cancelled if it was based on false or incorrect information or mistake.

(d) An approved motorcycle instructor may teach both the classroom and the on-cycle phases of any approved training course.

§31.3. Student Admission Requirements.

(a) Training courses are open to any person who is:

(1) physically and mentally capable of being licensed in Texas as a motorcycle operator; and

(2) at least 15 years old on the day the course begins.

(b) A person who is 15 years old but less than 18 years old may not be admitted to a training course before successful completion of the classroom phase of the driver education course as required by the Texas Education Agency.

§31.4. Verification of Course Completion by a Minor.

(a) The sponsor will issue a Driver Education Certificate (Form DL-41A) to a student who is 15 years old but less than 18 years old and who has successfully completed the approved basic training course. This certificate is issued to verify that the student has met the educational and training requirements for a motorcycle operator's license.

(b) The department will accept an original signature or the written, stamped, or typed name or signature of the chief school official on Form DL-41A. The signature of the instructor on the form must be an original signature. If the chief school official is also the instructor, that person may sign both appropriate spaces on the form.

§31.5. Approved Motorcycle Training Courses.

(a) Except as modified by subsection (c) of this section, the department adopts by reference the current version of the following MSF courses, in compliance with the 1989 amendments to Texas Civil Statutes, Article 6701c-4. The approved basic training course is "Motorcycle Rider Course: Riding and Street Skills," Modules One through Fifteen and Module Eighteen. The advanced training courses are the "Interim Experienced Rider Course" and the "Experienced Rider Course." The appropriate skill and knowledge evaluations for the advanced courses are approved, at the sponsor's discretion, but not required. The advanced course, or combination of the advanced courses, to be used by a sponsor will be determined by contract.

(b) These course curricula are available for inspection at the department's Austin headquarters.

(c) In addition to these curricula requirements, the minimum standards for motorcycle operator training courses include the following.

(1) The student to instructor ratio for classroom instruction may not exceed 24 students per instructor.

(2) The student to instructor ratio for on-cycle instruction may not exceed seven students per instructor.

(3) The department may change these ratios on a case by case basis when such change is justified after considering the available facilities, the safety of the students and instructors, and the efficient conduct of the course.

(4) A separate motorcycle must be available to each individual student during an entire on-cycle module.

§31.6. Motorcycle Requirements.

(a) A motorcycle must be rejected for use by the lead course instructor if it fails to meet the requirements of this section or if, in the discretion of the instructor, the motorcycle is unsafe for the rider, an instructor, another student, or any other person permitted in the riding area. A motorcycle may be deemed unsafe because of modification, damage, lack of maintenance, nonstandard configuration, or any other substantial safety reason.

(b) Any student-owned motorcycle must:

(1) meet all the requirements for operation on a public highway;

(2) have proof of adequate insurance coverage available for inspection by the lead course instructor; and

(3) meet all other requirements of this section.

(c) A student may use a borrowed motorcycle if the student can show written permission of the owner to use the motorcycle in the course and if it meets all other requirements of this section.

(d) A moped, no-ped, motor scooter, motor assisted bicycle, or a motorcycle with an engine displacement of over 350cc:

(1) may not be used in a basic course; and

(2) may be used in an advanced course only if it meets all other requirements of this section.

(e) No sponsor may provide a motorcycle to a student for use in an advanced course. If a sponsor provides a motorcycle to a student for use in a basic course, the motorcycle:

(1) must meet the safety requirements of subsection (a) of this section;

(2) must not be prohibited by subsection (d) of this section; and

(3) may, but need not, be registered, inspected, or insured for operation on the public highways.

§31.7. Notice and Hearing Requirements. If the department intends to deny, suspend, or cancel approval of a program sponsor or instructor, notice and an opportunity for hearing must be given as provided by Texas Civil Statutes, Article 6252-13a, Article 6252-13c, and Article 6252-13d, §§2-5.

§31.8. Suspension. The term of suspension under §31.1 of this title (relating to Program Sponsor) and §31.2 of this title (relating to Motorcycle Instructor) may not exceed one year. The program director may reduce a term of suspension for good cause. After expiration of a term of suspension, an applicant may re-apply. Before approval, the applicant must meet all current requirements 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 September 29, 1989.

TRD-8909236

Joe E. Miner
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 465-2000

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

Chapter 211. Administration Division

Substantive Rules

• 37 TAC §§211.16, 211.98,
211.100, 211.101, 211.102

The Texas Commission on Law Enforcement Officer Standards and Education proposes amendments to §§211.16, concerning notice; 211.98, concerning psychological examination; 211.100, concerning mandatory in-service training; 211.101, concerning voluntary surrender; and 211.102, concerning licensing of armed public security officers.

Section 211.16 will be amended by amending subsection (c) to add "be sent" and delete the word "receive", and subsection (c)(4) is added to expand the agency's authority to use the addresses contained in its file for notification purposes. Section 211.98 is amended by rewriting subsection (w), extending the waiver authority of the executive director past the December 31, 1989 date. The proposed amendment will allow the executive director to waive requirements under §211.98, with a written request of the chief administrator and a showing of good cause as determined by the commission. Section 211.100 will be amended by deleting subsection (a), relettering the remaining subsection, and by adding the requirement of training in recognition of child abuse and neglect to the 40-hour, in-service course requirement. The deletion of subsection (a) is required because the express authorization in the Texas Government Code, 415.032 (b), which authorized the commission to require in-service training for reserves, was repealed by House Bill 1947, Chapter 469. The House Bill also added the requirement of training in recognition of child abuse and neglect to the Texas Government Code, 415.034(b), the mandatory in-service training law. Section 211.101 is amended by including the requirement in subsection (d), that the written request for voluntary surrender, indicates the license holder understands and has knowledge of the consequences of the document being signed. The executive director may accept a request for voluntary surrender sent to the commission in any other form, that indicates the license holder intends to surrender the license to the commission. Section 211.102 is amended by amending subsection (a)(2) to reflect the new pre-licensing training and licensing test requirements. The amendment to the subsection will require the applicant for an armed public security officer license to successfully complete the current basic armed public security officers course and pass the licensing examination of the commission.

Johanna McCully-Bonner, general counsel, had 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 as a result of enforcing or administering the sections.

Ms. McCully-Bonner also has determined that for each year of the first five years sections are in effect the public benefit anticipated as a result of enforcing the section will be: Section 211.16 will expand the notification options available to the agency; 211.98 will provide a clearer set of procedures for the administration of the psychological examination; §211.100 will provide training requirements, in the recognition of child abuse and neglect, for peace officers; §211.101 will provide a more clear and concise set of procedures for accepting voluntary surrenders; and §211.102 will provide a more comprehensively trained armed public security officer. There is no anticipated economic cost to persons or small business who are required to comply with the sections as proposed.

Comments on the proposals may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1806 Headway Circle, Suite 100, Austin, Texas 78764.

The amendments are proposed under the Texas Government Code, Chapter 415.010 which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, 415.057, to establish the requirements for the psychological examination; 415.032 and 415.034, to establish the requirements for training curriculum and for content of in-service training courses for peace officers; and 415.001, 415.051, and 415.052, to establish minimum standards for licensing and the retention of a license issued by the commission.

§211.16. Notice.

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

(c) When individual notice is required, the holder of a license, certificate, or acknowledgment from the commission must be sent [receive] notice of any action or matter before the commission at:

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

(3) any other address requested by the holder in a written request to the executive director; or

(4) any other address the commission has in its files.

(d) The effective date of this section, is February 1, 1989; the effective date to subsection (c)(4) of this section as amended, is February 1, 1990.

§211.98. Psychological Examination of an Initial License Applicant.

(a)-(v) (No change.)

(w) The effective date of this section is February 1, 1989. On and after January 1, 1990, all declarations must be in full compliance with this section. [However,] The [the] commission may, in the discretion of the executive director, waive any provision upon written request of the chief administrator and a showing of [of this section for] good cause, as deter-

mined by the commission. [shown until December 31, 1989. On and after January 1, 1990, all declarations must be made in full compliance with this section.]

(x) The effective date of amendments to subsection (w) of this section is February 1, 1990.

§211.100. In-service Training Requirements for Agencies that Appoint Peace Officers or Reserves.

[(a) Any agency which appoints a peace officer or reserve shall provide to each peace officer or reserve, an in-service training course which includes some instruction in the recognition of cases involving abuse or neglect of children as required by law.]

(a)[(b)] Any agency which appoints a peace officer shall provide to each peace officer at least, the in-service training program required by this section. The program shall consist of one or more in-service courses, that total at least 40 hours during each 24-month period and must include training in the recognition of cases involving child abuse or neglect. The first 24-month period shall commence for each peace officer on that officer's date of appointment or on the effective date of this section, whichever is later.

(b)[(c)] An agency may voluntarily require of or provide to, any peace officer or other person employed or appointed by that agency, any additional training that exceeds this required peace officer in-service program.

(c)[(d)] An agency provides a program or course, for purposes of this section if:

(1) the agency orders or requires attendance and successful completion as a condition of continued employment or appointment; and the agency pays all the cost of attendance and provides direct or compensatory time off for attendance; or

(2) the agency requires attendance and successful completion as a condition of continued commissioning; and the agency has issued the commission as provided by law to a peace officer who is appointed by another entity.

(d)[(e)] The in-service training program shall consist of one or more separate courses, each of which shall have a final examination or skills test, as appropriate, which must be passed before course completion credit will be awarded. Any such course shall be reasonably related to the current or prospective duties of each peace officer who attends; and at least one such course provided by each agency should include some instruction in recent changes in criminal or civil law.

(e)[(f)] Unless otherwise provided by law, rule, or agreement, an agency or advisory board responsible for any in-

service course, shall, within its discretion:

(1) govern the conduct of that course;

(2) control the length, the number of times taught, and the specific content of any course; and

(3) assign any or all officers to attend any particular course.

(f) [(g)] The effective date of this section is February 1, 1989; the effective date for subsection (a) of this section as amended, is February 1, 1990.

§211.101. Voluntary Surrender of License.

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

(d) A license holder may voluntarily surrender any license by sending, or causing to be sent, a signed, written request to the executive director, who may accept or reject the request. The signed written request shall indicate that the license holder understands and has knowledge of the consequences of the document being signed. The executive director may accept requests for voluntary surrender submitted to the commission in any other form that indicates the license holder intends to voluntarily surrender the license to the commission. The executive director may liberally construe the intent of any request and may, specifically, construe the surrender of any single commission license to be a surrender of all other licenses held unless the request expressly states otherwise. The surrender should include a summary of the reason for the surrender.

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

(h) The effective date of this section is February 1, 1987; the effective date for amendments to subsection (d) of this section, is February 1, 1990.

§211.102. Armed Public Security Officers.

(a) To be issued a permanent armed public security officer license, an applicant must, at the time of licensing:

(1) (No change.)

(2) complete the current basic armed public security officers course and pass the licensing examination of the commission [meet the current training standards for private security officers as established by the Texas Board of Private Investigators and Private Security Agencies, and possess a certificate of completion for that course from that board]; and

(3) (No change.)

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

(f) The effective date of this section shall be January 5, 1988; the effective date for subsection (a)(2) of this section, as amended, is February 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 October 4, 1989.

TRD-8909270

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

Proposed date of adoption: February 1, 1990

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

• 37 TAC §211.108

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §211.108, concerning professional achievement awards. The new section as proposed will establish the criteria and procedures for the administration of a law enforcement officers awards program.

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

Ms. 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 clearer and more concise set of procedures, by which the Law Enforcement Officer Awards Program can be administered. 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, 1806 Headway Circle, Suite 100, Austin, Texas 78754.

The new section is proposed under the Texas Government Code, Chapters 415.010 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 the administration of the Law Enforcement Officer Awards Program.

§211.108. Peace Officer Achievement Awards.

(a) The commission shall cause to be issued, achievement awards to qualified peace officers, reserve peace officers, jailers, or custodial officers, who are licensed by the commission and hereinafter will be referred to as the nominees. The nominees for the achievement award must meet the following criteria:

(1) must have maintained, on a continuous basis, an average job performance during the individual's employment or appointment;

(2) must have exhibited relevant characteristics including, but not limited to, the following:

(A) valor—an act of personal heroism or bravery which exceeds the normal expectations of job performance, such as placing one's own life in jeopardy to save another person's life, prevent serious bodily injury to another, or prevent the consequences of a criminal act; or

(B) public service—when an individual through initiative creates or participates in a program or system which has a significant positive impact on the general population of a community which would exceed the normal expectations of job performance; or

(C) professional achievement—when an individual through personal initiative, fixity of purpose, persistence, or endeavor creates a program or system which has a significant positive impact on the law enforcement profession which would exceed the normal expectations of job performance;

(3) must have held a license at the time the qualifying act was performed;

(4) shall not have had the license suspended, revoked, canceled, or voluntarily surrendered; and

(5) must not be in violation of the Government Code, Chapter 415 or rules of the commission.

(b) The nominations/recommendations for the achievement awards shall be filed as follows:

(1) received by the commission on or before December 31st of each year beginning in 1990;

(2) must have been submitted by one of the following:

(A) an elected official of the state;

(B) an elected official of a political subdivision;

(C) an administrator of a law enforcement agency; or

(D) a person holding a current license issued by the commission;

(3) shall be supported by acceptable evidence of the nominee's qualifications for the award. Such evidence may consist of evaluations, police reports, newspaper clippings, eye witness accounts, or other valid, confirmable evidence.

(c) A committee shall be appointed by the executive director for the purpose of reviewing recommendations. Upon completion of the review, the committee will forward to the executive director no more than

20 names of the nominees for consideration. The executive director will provide a list to the commissioners who will then make the final determination of who merits awards.

(d) The effective date of this section is February 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 October 4, 1989.

TRD-8909298

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

Proposed date of adoption: February 1, 1990

For further information, please call: (521)
834-9222

Part X. Texas Adult Probation Commission

Chapter 321. Standards

• 37 TAC §§321.11-321.16

The Texas Adult Probation Commission proposes new §§321.11-321.16, concerning residential services, human immunodeficiency virus (HIV), electronic monitoring, community justice councils, community justice plan, and community Corrections Program. The new sections are proposed in order to replace the sections which were repealed in the September 22, 1989, issue of the *Texas Register* (14 TexReg 4906). The new sections will also establish minimum standards for an administration of case loads, programs, facilities, and equipment for effective probation services.

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

Mr. Peterson, 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 enforcement of more effective probation services. 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 Virginia Grote, Texas Adult Probation Commission, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753.

The new sections are proposed under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rates.

§321.11. Residential Services.

(a) Purpose. Residential facilities funded by the Community Justice Assistance Division (CJAD) shall provide the courts with a sentencing alternative de-

signed to:

(1) reduce jail/prison overcrowding by impacting potential jail/prison admissions as identified by a risk assessment instrument;

(2) provide public protection by ensuring levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which resident's interior and exterior movements and activities can be supervised by specific destination and time;

(3) provide an intermediate sanction on a continuum of community-based corrections for offenders that require a level of supervision/services greater than that of non-residential supervision to ensure compliance with the conditions of probation and law-abiding behavior; and

(4) provide services that target reintegration of the offender back into the community.

(b) Types of programs Facilities funded by CJAD and operated by agencies or private contractors may include, but are not limited to.

(1) Community Corrections Facilities

(A) restitution centers;

(B) court residential treatment centers;

(C) substance abuse treatment facilities;

(D) custody camps and boot camps;

(E) residential facilities for the mentally impaired;

(F) intermediate sanction facilities;

(G) halfway houses;

(H) pre-parole transfer facilities; and

(I) work facilities.

(2) County Correctional Centers.

(c) Offender eligibility. Placement of offenders in residential facilities shall only be by an order of the court and shall met the following criteria.

(1) Community Corrections Facilities:

(A) the defendant did not cause serious bodily injury or death of another as a result of the commission of the offense as determined by the trier of facts;

(B) the defendant did not use a deadly weapon during the commission of or flight from the offense as determined by the trier of the facts;

(C) the defendant matches the profile of offenders historically sentenced to county jail/prison from that jurisdiction; or the defendant has high risk/needs, who, if supervised at a lower supervision level would have increased the likelihood of violating the conditions of probation; and

(D) for restitution centers only:

(i) the defendant must have been convicted or pled guilty or nolo contendere to a felony offense other than those under the Texas Penal Code, Title 5; and

(ii) the defendant must be employable.

(2) County Correctional Centers. The defendant is eligible for placement:

(A) in lieu of a sentence of confinement in county jail;

(B) in lieu of jail time as a condition of probation;

(C) in lieu of jail time as punishment for violation of conditions of probation.

(d) Funding eligibility. CJAD will distribute funds to Community Supervision and Corrections Departments, counties or municipalities which:

(1) are in compliance with CJAD standards (agencies);

(2) are in compliance with CJAD standards for residential services (counties or municipalities);

(3) have established a community justice council; and

(4) have a community justice plan endorsed by the Community Justice Council and accepted by CJAD which identifies the need for the residential services.

(e) Target population. The community supervision and corrections departments, counties, or municipalities operating facilities, shall define a specific target population of offenders to be served and provide supervision/services that address the level of risk and needs of that target population.

(f) Term of participation. The term of participation in residential facilities shall be based on the following criteria:

(1) the offender has made sufficient progress towards meeting the objectives of the supervision plan;

(2) the offender has satisfied a sentence of confinement; or

(3) the offender has satisfied a period of detention as a condition of probation. Terms of placement in facilities should be limited to the minimum time necessary to fulfill the objectives of the placement.

(g) Policies and procedures. Local jurisdictions shall provide supervision/services to offenders placed in residential facilities in accordance with policies and procedures as described in the facility's operations manual. The policies and procedures shall be approved by the division director of CJAD. These policies and procedures shall include, but are not limited to, the following:

(1) utilizing the CJAD case management system for residential services or its equivalent;

(2) providing food services;

(3) providing a level of security consistent with public protection;

(4) providing a resident discipline system;

(5) providing fiscal accountability;

(6) providing for property inventory and control;

(7) providing for fire and other emergency plans;

(8) providing for protection of residents, rights;

(9) ensuring ready access to medical and psychiatric emergency services 24 hours a day;

(10) providing the court with timely written resident evaluation reports;

(11) providing for release procedures and continuity of care and supervision, based on an exit plan predicated on existing resources, upon release from the facility;

(12) developing and implementing mutually agreed upon supervision plans;

(13) implementing sound personnel practices;

(14) orienting new residents; and

(15) providing a pass/furlough policy for residents. All policies and procedures are to be reviewed and updated as necessary and approved annually by the division director of CJAD as per minimum guidelines established by CJAD.

(h) Maximum resident capacity. Agencies operating facilities funded by CJAD shall determine the maximum resident capacity limit of their facility with approval by CJAD. Maximum resident capacity shall be defined as the total number of offenders actually residing at the facility at any given time. The facility shall not exceed capacity under any circumstances.

(i) Utilization. Agencies establishing facilities under this section shall ensure that the facility reach 90% capacity within the first six months of operation. Facilities should maintain 100% capacity and shall not fall under 90% capacity, utilizing appropriate placements only.

(j) Denying admission. An offender may be denied admission to a facility if the facility director determines that such placement is not appropriate and is documented accordingly; or if the facility has reached capacity.

(k) Public meeting. Agencies interested in the establishment of facilities should demonstrate sensitivity to the community and other issues considered important by the Criminal Justice Council by holding a public meeting on the proposed site. A minimum of 30 days prior to the meeting, the agency proposing to operate the facility shall:

- (1) publish notice of the date, hour, place, and subject of the meeting describing the proposed location of the facility in three consecutive issues of a newspaper, or in newspapers that collectively have, general circulation in the county in which the proposed facility is to be located; and

- (2) mail a copy of the notice to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed facility is to be located, unless the proposed facility has been previously authorized to operate at a particular location by a Community Justice Council.

(l) Physical plant.

- (1) Community corrections facilities. Agencies operating facilities under this section must provide annually to CJAD documentation, that the facility meets local and state safety, health and sanitation standards, codes, and ordinances. The agency must also ensure that the facility provides an environment that promotes reintegration of the offender back into the community.

- (2) County correctional centers. Agencies operating facilities under this section must follow the county correctional center standards and rules as adopted by the Texas Commission on Jail Standards.

(m) Data. Agencies operating or utilizing facilities under this section shall submit, on a timely basis, data required by CJAD.

§321.12. Human Immunodeficiency Virus

(HIV). The community supervision and corrections departments shall develop and implement policies in accordance with guidelines promulgated by the Texas Department of Health and adopted by the Criminal Justice Assistance division. These policies, to be incorporated in the departments' administrative manuals, shall include, but not be limited to, the following:

- (1) education/training;
- (2) confidentiality;
- (3) workplace guidelines; and
- (4) handling of individuals with AIDS or HIV education.

§321.13. Electronic Monitoring.

(a) Purpose. Electronic Monitoring (EM) should provide the judiciary with the most restrictive non-custodial sanction available for ensuring public safety and the social control of offenders.

(b) Offender eligibility. Placement of offenders on EM shall be only after an order of the court. Placement may occur as a result of any of the following circumstances:

- (1) personal bond;
- (2) pretrial release/supervision;
- (3) regular supervision services for high risk offenders;
- (4) in lieu of a sentence of confinement to jail;
- (5) in lieu of jail as a condition of probation;
- (6) in lieu of payment of a fine/costs if not indigent;
- (7) as a condition of an appeal bond; or
- (8) as a condition for criminal non-support. Documentation must be maintained to verify that EM is the least restrictive alternative.

(c) Funding eligibility. The Community Justice Assistance Division (CJAD) will distribute funds and/or EM equipment to community supervision and corrections departments, counties, or municipalities which:

- (1) are in compliance with CJAD standards (agencies); or
 - (2) are in compliance with CJAD EM standards (counties or municipalities); and
 - (3) have had their community justice plan accepted by CJAD; and
 - (4) have a community justice plan endorsed by the community justice council, where a council exists.
- (d) Policies and procedures. Local jurisdictions shall supervise offenders on EM in accordance with policies and procedures

as described in the department's operations manual and defined in the community justice plan. The policies and procedures shall be approved by the division director of the Community Justice Assistance Division. These policies and procedures shall include, but not be limited to, the following:

- (1) constitutional issues such as search and seizure, right to privacy, equal protection;

- (2) equipment installation and verification of proper functioning;

- (3) continuum of intervention strategies in response to violations;

- (4) violation verification procedures;

- (5) furloughs from curfew;

- (6) frequency of face-to-face verification contacts;

- (7) alternate supervision strategies if EM is not feasible (if applicable);

- (8) offender/family orientation on the use of EM;

- (9) term of participation;

- (10) training requirements for staff. All policies and procedures are to be reviewed and updated as necessary and approved annually by the division director of CJAD as per minimum guidelines established by CJAD.

(e) Fees. The EM supervision strategy shall not be denied to any eligible offender because of inability to pay a direct or indirect fee for the services.

§321.14. Community Justice Council.

(a) Establishment. The establishment of a community justice council is a prerequisite to establishing a community corrections facility, unless, on September 1, 1989, a board of council exists in the community that performs duties substantially similar to those imposed on a community justice council which includes: providing continuing policy guidance and direction for the development of criminal justice plans and community corrections facilities, and programs within the jurisdiction. Jurisdictions establishing a community corrections facility under the provisions of House Bill 2335 after September 1, 1989, must establish a community justice council. The council membership should consist of the following persons or their designees:

- (1) a sheriff of a county to be served by the facility, chosen by the sheriffs of the counties to be served by the facility;

- (2) a county commissioner or a county judge from a county to be served by the facility, chosen by the county commissioners and county judges of the counties to be served by the facility;

- (3) a city council member of the

most populous municipality in a county to be served by the facility, chosen by the members of the city councils of cities to be served by the facility;

(4) not more than two state legislators elected from a county to be served by the facility, chosen by the state legislators elected from the counties to be served by the facility;

(5) the presiding judge from a judicial district to be served by the facility, chosen by district judges from the judicial districts to be served by the facility;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county to be served by the facility, to be chosen by the judges of statutory county courts with criminal jurisdiction in counties to be served by the facility;

(7) a county attorney with criminal jurisdiction from a county to be served by the facility, chosen by the county attorneys with criminal jurisdiction from the counties to be served by the facility;

(8) a district attorney or criminal district attorney from a judicial district to be served by the facility, chosen by the district attorneys or criminal district attorneys from the judicial districts to be served by the facility;

(9) an elected member of the board of trustees of an independent school district in a county to be served by the facility, chosen by the members of the boards of trustees of independent school districts located in counties to be served by the facility; and

(10) members of the general public and representatives of any nonprofit organizations which play a significant role in the corrections system of the community.

(b) Recognition. In order for a group to be recognized as a designated community justice council under the provisions of House Bill 2335, the establishing jurisdiction must forward to the Texas Adult Probation Commission the following items:

(1) a list of names and titles of the individual members of the community justice council or group functioning as a community justice council;

(2) documentation as to the date of formation of the community justice council or group;

(3) written documentation indicating the charge, responsibilities, and/or duties of the community justice council or group. The Texas Adult Probation Commission, after a review of the materials submitted by the jurisdiction and if an affirmative finding is made that the petitioning council is to be recognized, will issue a letter of confirmation to the jurisdiction seeking recognition.

(c) Continuing recognition. In order

for a community justice council to maintain its recognition status from the state, the establishing jurisdiction must file with the Texas Adult Probation Commission by September 1 each year a list of active members of the council. It is the intent for establishing jurisdictions to replace members of the councils as vacancies occur. Unless otherwise notified after filing the list of active members with the Texas Adult Probation Commission, the establishing jurisdiction and the community justice council may presume the continuing recognition of the council by the state.

(d) Community justice task force. The community justice council should appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area to be served by the facility;

(2) the chief of police of the most populous municipality to be served by the facility;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area to be served by the facility;

(4) the superintendent of the most populous school district to be served by the facility;

(5) the supervisor of the Department of Public Safety region closest to the facility, or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area to be served by the facility;

(7) a substance abuse treatment professional appointed by the council of governments serving the area to be served by the facility;

(8) the department chief of the community supervision and corrections department to be served by the facility;

(9) the local or regional representative of the Board of Pardons and Paroles Division with responsibility for the area to be served by the facility;

(10) the representative of the Texas Employment Commission with responsibility for the area to be served by the facility;

(11) the representative of the Texas Rehabilitation Commission with responsibility for the area to be served by the facility;

(12) a licensed attorney who practices in the area to be served by the facility and whose practice consists primar-

ily of criminal law; and

(13) a court administrator, if one serves the area to be served by the facility. As with the membership of the community justice council, it is encouraged that the membership of the community justice task force be expanded to include members of the general public and representatives of any nonprofit organizations which play a significant role in the corrections system of the community.

§321.15. Community Justice Plan.

(a) Purpose. Beginning September 1, 1990, in order for a department to receive state aid, a plan must be submitted to, and determined acceptable by, the Community Justice Assistance Division. The plan should describe how the current proposed community based correctional programs will be managed to achieve a targeted level of alternative sanctions other than jail and prison. The plan should provide a comprehensive description of how all resources allocated to the judicial district, including revenues to the department, county and municipality will be effectively utilized. House Bill 2335, Article 3, §6 requires the community justice plan to be submitted to the Community Justice Assistance Division, House Bill 2335, Article 11. If the division determines the plan is acceptable it shall initiate payment of three categories of state aid:

(1) annual amount for each full-time officer supervising designated workload of felony probationers;

(2) per diem amount for each misdemeanor probationer; and

(3) an annual amount computed by multiplying percentage of institutional beds allocated to the counties times total amount provided in the General Appropriations Act for the Community Correctional Program.

(b) Development. All community justice plans must be approved by the district judge(s) who manage the department. Unless otherwise specified by the district judges, the department chief or his designee has the responsibility to serve as the primary manager of the planning process, coordinating council activities, data collection, plan composition, program prioritization, and plan drafting and submission. If a community justice council serves the department, the council shall provide direction for the development of the community justice plan. The council, after judicial approval, shall submit the plan.

(c) Format. The community justice plan must include, at minimum, the following items:

(1) mission statement;

(2) offended profile target population including, at minimum, comprehensive description of revoked probationers,

TDC commitments, and jail detainees;

(3) description of the present community corrections system, including services, programs, and facilities;

(4) description of the assessment process used to place offenders in a sanction both initially and during course of supervision;

(5) determination of gaps and needs in current system;

(6) priority goals for the period of the plan;

(7) programs to meet priority goals;

(8) methods to evaluate programs;

(9) anticipated policy decisions impacting outcomes of community corrections programs;

(10) description of continuum of sanctions—community and individual programs;

(11) copy or description of any proposed contract required to achieve proposed facilities or programs;

(12) description of current and proposed personnel, training programs, career ladder, and effective utilization of staff resources;

(13) description of existing and proposed community service programs and restitution programs;

(14) commitment by Community Justice Council and significant criminal justice leaders to achieve a targeted level of alternative sanctions;

(15) commitment by department to achieve a targeted level of alternative sanctions;

(16) benefits to community; and

(17) judicial endorsements.

(d) Policies and procedures. Each department or council shall develop and implement policies and procedures for the review of proposals submitted to the department/council in response to the priority programs identified in the plan. Procedures should also outline how action will be taken and recommendations made, for funding these proposals. These recommendations of the local department/council will then be submitted to CJAD for review when applications are submitted.

(e) Annual submission. After the district judges, managing the department, have approved the plan, the department/council shall submit a plan to the division each year with appropriate revisions. The plan for each fiscal year is to be submitted by March 1 of the preceding fiscal year.

(f) Review. Each plan will be reviewed by the division to determine if it

contains the specified items and presents a comprehensive description of how community corrections will achieve the intent of House Bill 2335 in their local jurisdiction. If the division determines the plan is acceptable, payment of state aid is possible. House Bill 2335 lists state aid as:

(1) annual amount for each full-time officer supervising designated workload of felony probationers;

(2) per diem amount for each misdemeanor probationer; and

(3) an annual amount computed by multiplying percentage of institutional beds allocated to the counties, times total amount provided in the General Appropriations Act for the Community Correctional Program.

(g) Regional planning efforts. Planning on a regional basis is encouraged. Programs and facilities which serve offenders from several local jurisdictions are cost-effective alternatives. The community justice plan for each jurisdiction should clearly identify the target population and priority need, for the service offered by the regional program or facility. The jurisdiction in which the facility or program is to be based should describe in detail the program operations. If the regional plan includes a facility, a community justice council must be established in the jurisdiction in which the facility will be located. Representatives from other participating jurisdictions should participate in the community justice planning process.

§321.16. Community Corrections Program.

(a) Purpose. The Community Corrections Program (CCP) enables localities to increase their involvement and responsibility in developing local correctional programs that provide effective, economical, and efficient sanctions for offenders.

(b) Target population. Offenders eligible to be served through the CCP include:

(1) felony offenders diverted from the Institutional Division of the Texas Department of Criminal Justice (IDTDCJ) either prior or subsequent to, incarceration;

(2) persons convicted of misdemeanors and sentenced to a term of confinement in county jail;

(3) persons required as a condition of misdemeanor or felony probation to serve a term of confinement in county jail;

(4) persons required to serve a term of confinement in county jail as punishment for violation of a condition of misdemeanor or felony probation; and

(5) pre-adjudication or post-adjudication offenders whose risk and needs, indicate the likelihood of re-offending if they do not participate in the CCP.

(c) Eligibility for funding. The Community Justice Assistance Division

(CJAD) will distribute community corrections program state aid to community supervision and corrections departments which;

(1) are in compliance with CJAD standards;

(2) have had their community justice plan accepted by CJAD; and

(3) have a community justice plan endorsed by the Community Justice Council (CJC) where councils exist.

(d) Programs. Programs eligible for funding through the CJP include, but are not limited to:

(1) pre-trial intervention;

(2) enhancements to probation sanctions, supervision, and services to the courts;

(3) non-residential supervision programs;

(4) community corrections facilities and restitution centers;

(5) county correctional centers; and

(6) programs which assist a county to remain in compliance with the formula allocating space at the IDTDCJ. CCP funds are not available to fund jails or prisons.

(e) State aid. The CCP state aid available to a community supervision and corrections department, is an annual amount computed by multiplying the percentage of institutional beds allocated to the counties within the department's jurisdiction, times the total amount provided in the General Appropriations Act for the CCP. It is distributed based upon the CJAD approval of grant applications intending to fund the CJP.

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 September 28, 1989.

TRD-8909182

Virginia Grote
Administrative Secretary
Texas Adult Probation
Commission

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 834-8188

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department of Aging

Chapter 255. Funding Allocation Formula for Retired Senior Volunteer Projects

Statutes and Regulations

• 40 TAC §255.39

The Texas Department on Aging proposes new §255.39, concerning funding allocation formula for Retired Senior Volunteer Projects in Texas. The Texas Board on Aging adopted a funding formula for the distribution of additional State revenue as a result of action by the 71st Legislature.

Charles Hubbard, fiscal officer, Texas Department on Aging has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Alex Guerra, director of programs, Texas Department on Aging 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 increased delivery of services as a result of increased funding an equitable distribution of current and future state funds to Retired Senior Volunteer Projects. 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 Edwin R. Floyd, Program Liaison, Texas Department of Aging, P.O. Box 12786, Austin, Texas 78701.

The new section is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§255.39. Funding Allocation Formula for Retired Senior Volunteer Projects.

(a) Current Fiscal Year 1989 Funding previously awarded to each of the Retired Senior Volunteer Projects (RSVPs) will serve as a base for Fiscal Year 1990/1991 funding.

(b) One hundred thousand dollars in state revenue allocated to the Texas Department on Aging by the 71st Texas Legislature for funding of RSVPs will be distributed as follows:

(1) \$2,000 will be awarded to each of the 33 RSVPs to address increases

attributed to inflation and recover funding which was unavailable to the 31 RSVP projects which were in operation during Fiscal Year 1985;

(2) 35.0% of the balance of the funds remaining after the distribution actions taken in §255.39(b)(1) of this section, or \$34,000, will be distributed to the 33 projects based on the number of persons 60 years of age and older in each of the RSVP's service area(s);

(3) the remainder of the funds, or \$22,100, will be distributed to the 25 RSVPs that currently do not receive sufficient amounts to meet the federally required 30.0% match.

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 October 3, 1989.

TRD-8909235

O. P. Bobbitt
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: November 10, 1989

For further information, please call: (512) 440-5264

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 10. COMMUNITY DEVELOPMENT

Part IV. Texas Housing Agency

Chapter 149. Low Income Rental Housing Tax Credit Rules

- 10 TAC §§149.1, 149.2, 149.4, 149.5, 149.6, 149.7, 149.8, 149.9, 149.11

The Texas Housing Agency adopts amendments to §§149.1, 149.2, 149.4, 149.5, 149.6, 149.7, 149.8, 149.9, and 149.11 without changes to the proposed text as published in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3384).

The amended sections are required to conform the Agency's Low Income Tax Credit Rules to new federal laws and regulations dealing with amendments to the Internal Revenue Code of 1986, §42.

The amended sections will enhance the state's ability to provide safe, sanitary, and affordable housing for Texans of low and moderate income through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration by the Texas Housing Agency.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 12691-6, §8(a)(3) which provide the Texas Housing Agency with the authority to adopt rules and enforce bylaws and rules for the conduct of its affairs.

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 October 3, 1989.

TRD-8909241

Thomas C. Adams
Executive Administrator
Texas Housing Agency

Effective date: October 24, 1989

Proposal publication date: July 14, 1989

For further information, please call: (512) 474-2974

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter E. Contracts Management

- 25 TAC §§401.371-401.393

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.371-401.393. Sections 401.373-401.379, 401.381-401.386, 401.388-401.390, and 401.392 with changes to the proposed text as published in the June 23, 1989, issue of the *Texas Register* (14 TexReg 3089). Sections 401.371, 401.372, 401.380, 401.387, 401.391, and 401.393 are adopted without changes and will not be republished.

The purpose of the new sections is to provide a comprehensive policy and procedure for contracting using funds received from or through TDMHMR. The new sections also implement Senate Bill 1426 of the 71st Texas Legislature, which requires the department to competitively procure community-based services for persons with mental illness or mental retardation.

In adopting the sections, the term "client" has been changed to "person served," "person with mental illness or mental retardation," or a similar term as the context requires. In several sections, language has been added to indicate the maximum contract term for specific types of contracts.

In §401.373, the terms "amendment," "renewal," and "term" have been added. The term "client services contract" has been changed. In the same section, language is added in subsection (j) pursuant to Senate Bill 1426 to reflect requirements for MHMRAs that participate in the Prospective Payment Program.

In §401.376(k), language has been revised consistent with the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-202, §2. 29, which requires reports of allegations of professional miscon-

to "direct services contract" in keeping with the department's deletion of the word "client" from its terminology. Within the definition of "direct services contract", "general" has been added to "hospital services agreement." The term "consultant contract" has been revised. The term "contract for services" has been changed to "contract for services or performance contract" to ensure that the general term "contract for services" is not confused with the term as it is used to describe contracts with community centers. The definition of "contract manager" has been revised to indicate that the contract manager for contract for services (performance contracts) may be a person designated by the deputy commissioner. The definition of "hospital service agreement" has been revised to "general hospital services agreement" and has been modified to be less prescriptive and to include such agreements between MHMRAs and subcontractors. The term "local match" has been revised to indicate that match is calculated on the basis of a percentage of general revenue contract for service funds, not all contracted funds, i.e., federal mental health block grant funds are not included in the funding on which local match is based. The term "minority business" has been replaced with the term "disadvantaged business," which is defined consistent with Article V of the current appropriations act. The term "plan of service" has been added and defined consistent with prevailing department standards. The definition of "program contract" has been revised to indicate that it excludes direct services contracts.

In §401.374(b)(2), the term "better" has been revised to "best" with reference to price and quality of services in goods to be obtained. Paragraphs (6) and (12) of the same subsection have been reworded.

In §401.375(d)(1) and (2), which are contained in part in existing sections of Chapter 403, Subchapter A (concerning community mental health and mental retardation centers), are included for clarification. Chapter 403, Subchapter A, is to be repealed. Subsection (e) of the same section has been deleted and pertinent provisions included in subsection (d). Subsequent subsections have been correspondingly redesignated.

Subsection (f) of the same section has been changed to reference the TDMHMR Contracts Manual.

duct of physicians to be reported to the department, which in turn shall report the allegation to the Texas Board of Medical Examiners. The general statutory procedure for reporting allegations for this professional group is adopted for other related professional groups.

In §401.377, minor editorial changes are made to subsections (b) and (c).

In §401.378 (b)(2)(A)(ii), it is clarified that the *Texas Register* is to be used when publishing an intent to contract when the contracting agency is the department and the contract is for consultant services. Minor editorial changes are made to subsection (d)(2) of the same section.

Subsection (1) of the same section is changed to require signatures on changes to offers to be of the same authority as signatures on the original offer.

Concerning subsection (r) of the same section, the nature of services subject to the requirements of the subsection is clarified.

The title of §401.383, formerly concerning department program contracts, has been renamed "Program Contracts" to indicate that the section is not limited to program contracts of the department, but applies to community center program contracts as well, as is reflected in subsections (a)(2), (b)(2), and (c)(2) of the section as adopted. Language has been added to the section and to §401.384 and §401.385 to provide a limitation on the term.

In subsection (c) of the same section, language governing hospital service agreements has been deleted. Hospital services agreements have been designated as direct services contracts pursuant to the intent of Senate Bill 257 of the 70th Texas Legislature, which requires competitive procurement of such services, with corresponding modification of definitions in §401.373.

The title of §401.384, formerly concerning requirements specific to type of contract: client services contracts, has been renamed "Requirements Specific to Type of Contract: Direct Services Contracts" to reflect current departmental terminology.

Subsection (b) is revised to indicate that consultants are knowledgeable of the treatment plan within 45 days.

Subsection (c) of the same section is clarified to indicate that only the department must submit certain contracts to the Office of Contracts Management for approval.

In subsections (g) and (h) of the same section, terminology is changed to "contractor/subcontractor" throughout to accurately reflect department intent with regard to application of the subsection.

The title of §401.385, formerly concerning requirements specific to type of contract: contracts for services, has been renamed "Requirements Specific to Type of Contract: Contracts for Services (Performance Contracts)" to clarify that the term "contracts for services" refers to a specific class of contracts. Subsection (a) of the same section clarifies the requirement for provision of specified core services.

Concerning subsections (i) and (j) of the same section, provisions relative to local

match and fees for services, which are contained in existing sections of Chapter 403, Subchapter A (concerning community mental health and mental retardation centers), are added for clarity. Chapter 403, Subchapter A is to be repealed.

Section 401.388(a) has been revised to indicate notice of right to administrative hearing when adverse action is taken.

Section §401.389(d) has been revised to require written notice.

Exhibit C and Exhibit D, adopted by reference in §401.391, have been revised to require the name of the responsible staff member as well as the signature.

A commenter commended the department for its willingness during the formulation of the new subchapter to consider the associated difficulties and costs and acknowledged the spirit of cooperation and coordination which occurred throughout the development of the regulations. The commenter noted that the subchapter was mandated by legislation but strongly recommended that it be written as briefly and simply as possible. The department agrees that simplicity and brevity are desirable and has made every effort to make the complex area of contracts more easily understandable.

One commenter noted that reactions to adverse publicity result in over-regulation, of which the new subchapter is an example. Another commenter noted that the rule is too encompassing and goes beyond the intent of Senate Bill 1426. The department responds that the subchapter was written because TDMHMR has had no comprehensive policy and procedures to govern contracting. With the volume of contracting increasing, and in view of management audit and program review findings relative to contracting, the need for such regulation is apparent. The intent of the sections is to address all major phases of contracting, not just those types of contracting governed by Senate Bill 1426.

One commenter questioned whether the expenditure of \$2.2 million annually to implement the subchapter can be expected to be offset by any savings/benefits. Another commenter noted that compliance with Senate Bill 1426 would require very little additional staff, as contract regulation is not new to the department. Also concerning the fiscal note, a commenter noted that TDMHMR should allocate \$2,207,500 to the community centers in addition to funds appropriated by the legislature for 1990-1991 since increases for centers were specified for direct services, or TDMHMR should rewrite the subchapter so that it has no fiscal implications. The commenter noted that Senate Bill 1426 was designated as having no fiscal impact, and that furthermore, the line item for management and support funding for community centers was eliminated for this biennium. The commenter stated that the administrative cost of doing business in compliance with the new subchapter seems out of line with legislative intent in both Senate Bill 1426 and the appropriations bill. The commenter suggested that a reordering of TDMHMR priorities may be warranted if the intent is to shift \$2 million away from client services to implement the provisions of the subchapter. Another commenter expressed concerns that the presentation of the sections with a large fiscal

note would doom Senate Bill 1426 to failure. Another commenter noted that funding should be provided to enable compliance to the provisions of Senate Bill 1426. Additional comment was received that the subchapter should be predicated on existing contract systems and should not require costly additions.

With regard to savings and benefits that may accrue as a result of implementing the new sections, the department responds that principal savings will be in the form of cost avoidance (fewer instances of misuse of state funds) and increased value for expenditure. The benefit is accountability for quality of human services.

Concerning the amount of the fiscal note attached to the proposed sections, the department responds that the assessment of fiscal implications was based on individual comment from a number of community centers and state facilities indicating that implementing the provisions of the sections would require substantial additional resources. However, in reviewing the potential fiscal impact of Senate Bill 1426 in the context of the current extent of contracting for direct services and in consideration of several modifications to requirements to the subchapter as proposed, the department revises its original estimate of fiscal implications: The cost to state government is expected to be less than \$100,000 annually, and will be met by the reallocation of existing resources. There is no anticipated cost to local government or small businesses as a result of administering the sections. The revised note includes the elimination of costs associated with support services contracts requirements for community centers, which have been substantially modified to vast discretion at the level of local boards of trustees (see §401.382(b)).

Two commenters noted that the subchapter is too prescriptive. One noted that many of the details could be eliminated or included in the TDMHMR Contracts Manual. The other commented that arbitrary treatment of private providers and a lack of continuity and due process will discourage providers. The department responds that the Contracts Manual applies only to the department, not to community centers, contractors, and subcontractors. Senate Bill 1426 requires the department to develop a competitive procurement or similar system for obtaining community-based services for persons with mental illness or mental retardation. The sections that are detailed and contain explicit procedures are designed to respond to this mandate. Because the requirements affect private rights and interests, they must be published for public comment pursuant to the Administrative Procedure and Texas Register Act. The policies and procedures in the new subchapter are predicated on sound business practice and contract law.

A commenter noted that it is difficult to determine which sections pertain to community centers. The department responds that community centers are referred to in the sections as "community centers," "MHMRAs," "designated providers," or "contractors," as appropriate to the context.

A commenter suggested that the provisions of the subchapter relative to Senate Bill 1426 be separated from other portions of the subchapter. The department responds that the subchapter is intended to be comprehen-

sive and that the provisions of Senate Bill 1426 are addressed as appropriate throughout the sections.

A commenter noted that the department should not be contracting for "people services" because complete control is lost and such practices could leave the department open to further lawsuits. The commenter noted that private providers can discontinue services at any time. The commenter further stated that the department can do a better job of offering necessary services and that the services will be stable and secure. The department responds that the ability of the department to provide an array of services statewide is reliant on its ability to enter into contractual relationships, which are legislatively authorized by the Texas Mental Health and Mental Retardation Act.

A commenter noted that the terms "client services contracts" and "contract for services" are confusing. The department responds that the terms have been clarified.

A commenter stated that services to persons at facilities (specifically food and laundry services) should not be contracted because private providers cannot duplicate the quality of these services at the same cost. The department responds that the competitive review process is in effect for state agencies and such services are reviewed to determine if they can be more effectively provided by contract or by the facility.

One commenter questioned whether the criteria for contracting were related to approval requirements. The department responds that there is no direct relationship between form of procurement and necessity for central office approval. Community centers are not required to obtain central office approval for contracts; community centers are required to obtain approval only for substantial alterations to required contract provisions.

One commenter questioned the implementation date of the policies and procedures contained in the new sections. The department responds that the sections will take effect in October, but that pursuant to Senate Bill 1426 of the 71st Texas Legislature, the competitive procurement requirements for community services contracts pertain to contracts negotiated on or after August 30, 1989.

A commenter recommended that the subchapter be limited to contracts governing services to individuals with mental illness or mental retardation. The commenter specifically requested that reference to consultant contracts, professional services contracts, and support services contracts be excluded. The commenter noted that these additional features in the subchapter are costly and unnecessary, and the commenter stated that the Management Audit Section of TDMHMR has testified that community centers have adequate business practices in place to cover these issues. The department responds that the purpose of the subchapter is provide comprehensive policy and procedure for contracting with TDMHMR funds. The department responds that §401.382(b) has been substantially modified to permit local discretion in the management of support services contracts. The department is unfamiliar with any testimony provided by staff that would indicate that provisions in any of the specified areas of contracting are unnecessary.

Regarding §401.374, a commenter applauded the inclusion of the section but expressed concern that such precepts of good business practice appear in the subchapter. The department responds that the principles affect private rights and interests.

A commenter noted support for §401.374(a) and suggested that the new subchapter should be limited to the essential features of Senate Bill 1426 to facilitate contracting. The department responds that the sections are intended to be comprehensive and thorough with regard to those contracting policies and procedures that affect private rights and interests.

With specific reference to §401.374(b)(12), a commenter suggested the wording be changed to "amend contracts as needed following review by counsel and upon approval by parties of the contract." The department responds that the wording as proposed more clearly reflects the department's intent.

In reference to §401.375(a), concerning general requirements for the department and MHMRAs, a commenter noted that it is unclear which parts of the TDMHMR *Contracts Manual* apply to community centers. The department responds that the TDMHMR *Contracts Manual* does not apply to community centers and that three references in the subsection have been revised to indicate that manual applies exclusively to the department.

Concerning the same subsection and subsection (b), a commenter requested that the term "state funds" be replaced with the term "department funds." The department responds that the language has been revised.

Regarding §401.375(c), one commenter suggested that veterans of the Vietnam era be added as a protected class. The department responds that the section addresses disadvantaged and small businesses, not protected classes.

Concerning subsection (f) of the same section, a commenter recommended that language clearly indicate whether a penalty clause is a mandatory provision for every contract. The department responds that language has been revised to indicate that a penalty clause is not mandatory.

With regard to subsection (g) of the same section, a commenter questioned whether there is a requirement for community centers to use a standard contract form. Another commenter expressed the preference that the department develop standardized provisions for contracts, rather than standard contracts, for community centers. The department responds that language has been revised to indicate that community centers must use required contract provisions, but that only the department is required to use standard contract forms.

Concerning the same subsection, one commenter questioned whether standard contract forms have to be used by community centers for professional services and consultant contracts. The commenter urged that community centers not be required to follow a strict contract format, but be provided a list of requirements to be included in contracts. It was also suggested that the format of how services are to be purchased and paid for should be left to local discretion. The department responds that community centers are

not required to use standard contract forms, but are directed to use required contract provisions. With specific reference to consultant contracts, professional services contracts, and employee education and training contracts, language has been revised in §401.383 to reference community centers to the governing statutes, the pertinent provisions of which are described.

Two commenters recommended that paragraph (2)(B) of the same subsection, which states that contract modifications must be equally or more restrictive, should be deleted. The department concurs and has revised the subsection consistent with the commenters' concerns.

Concerning subsection (j) of the same section as proposed, a commenter noted that wording should be "health or safety" and that language should be changed to "and steps as are necessary to secure the health or safety of clients, including..." The department responds that the language has been revised.

Concerning §401.376(b), concerning general requirements for contractors, two commenters recommended that access be "reasonable" not "unrestricted"; another commenter suggested removing the words "unrestricted" and "all" from the provision in order to make the requirement less offensive to contractors. The department responds that Senate Bill 1426 states "Each private provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract." Similar provisions are contained in the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-204, §4.01(a), which states, "Each designated provider contract shall contain a provision authorizing the department to have unrestricted access to all facilities, records, data, and other information under the control of the designated provider or subcontractor of the designated provider as necessary to enable the department to audit, monitor, and review all financial and programmatic activities and services associated with the contract."

Concerning subsection (c) of the same section, two commenters questioned whether the provisions of the subsection mean that MHMRAs can change the length of time a subcontractor must maintain records. The commenter requested that foster care providerships be exempted from the requirements of the section. The department responds that MHMRAs can modify the length of time subcontractors must retain records provided the modification is consistent with required contract provisions and prevailing standards. Although the subchapter has been revised in §401.377 to exempt foster or family home placements from the competitive procurement requirements of the subchapter, other provisions of the subchapter apply.

Concerning subsection (f)(2) of the same section, which references Exhibit B, National Crime Information Center Uniform Offense Classifications, one commenter suggested that the listing of criminal acts that must be

disclosed to the department or the MHMRA to be edited to remove such crimes as fraud for insufficient funds. The department responds that the language that references the exhibit provides latitude for discretion to be exercised in the disposition of contracts with which such persons are associated.

Concerning subsection (g) of the same section, a commenter noted that language should state "or service in which the individual was directly concerned or for which...." The department responds that language has been revised.

Concerning the same subsection, a commenter suggested that the focus of the section be narrowed. The department responds that the section is closely based on Senate Bill 1426 and by law cannot be narrowed.

With reference to §401.377, one commenter requested that community centers be exempted from the requirements of the section. The department responds that the new subchapter is predicated on the criteria by which the method of procurement is determined.

Also concerning §401.377, a commenter suggested that subsection (a)(2) could be construed to deprive the contracting agency from obtaining necessary products if only one bid is received. The department responds that the subsection as adopted does not apply to goods. In the case of services, if only one bid is received, the procurement is not invalidated.

With regard to §401.379(b)(5), a commenter noted that the language is problematic and suggests that the MHMRAs, and ultimately the department, may become the target of lawsuits by non-minority businesses. The department responds that preference to disadvantaged contractors and subcontractors is mandated by Article V, §118 of the current appropriations act. Language has been modified to extend preference to disadvantaged businesses in all contracting situations in §401.375(c)(3).

Concerning §401.382, one commenter suggested the section's title was confusing. The department responds that the term "support services contract" is defined in §401.373.

Regarding subsection (b) of the same section, one commenter noted that nothing in the regulations specifically addresses the purchase of goods at community centers, and recommended that the subsection be deleted. Another commenter recommended the deletion of the section in full. Also with reference to subsection (b) of the section, two commenters requested clarification concerning the meaning of the Local Government Code. A commenter questioned whether community centers are going to have to start following state purchasing guidelines. Another commenter noted that dollar limits in the subchapter that was distributed and in the *Texas Register* are different for support services contracts. Concerning paragraph (3) of the same subsection, a commenter noted that the term "three written bids" is unclear. A commenter also requested that new subsection (c) be added to exempt support services contracts from competitive renewal for the fiscal year 1990. The department responds that subsection (b) has been revised to delete references to the Local Government Code or

specific dollar limitations. The language has been revised to require local boards of trustees to provide written assurances that purchasing procedures are in place which conform to prudent and acceptable business practices.

With reference to §401.383(c), a commenter questioned whether hospital service agreements should not be considered client (direct) services contracts. The department agrees and has deleted hospital service agreements from the section.

Concerning subsection (d) of the same section as proposed, a commenter questioned whether employee education and training contracts can be competitively procured. The department responds that education and training contracts do not have to be competitively procured, but may be.

In general and with specific reference to §401.384, three commenters recommended that foster care providerships be excluded from the requirements of the section. The department responds that language has been added in §401.377, concerning criteria for determination of method of procurement, to indicate such individual foster or family care placements are considered sole source contracts, but that other applicable requirements of the subchapter pertain. The term "foster or family home placement" has been added to §401.373.

Also with regard to subsection (a) of the same section, one commenter questioned if there were a dollar limit at which invitations for bid are required, or if the requirement is based exclusively in the criteria contained in §401.377. The department responds that there is no dollar limit. Whether a contract is solicited through IFB or RFP or sole source is not determined by the amount of the contract, but by the procurement methodology suggested by defining criteria contained in §401.377. Most direct services contracts are procured through a request for proposal, not an invitation for bid.

With regard to subsection (g) of the same section, two commenters noted that the word "may" should be replaced with the word "shall," because pursuant to Senate Bill 1426, the requirement is mandatory. The department responds that clarification of legislative intent indicates that "shall" is preferred and language has been revised.

Also concerning subsection (g), a commenter noted that the automatic renewal of contracts meeting certain criteria may be appropriate for residential services contracting (for the purpose of continuity) but that such renewal is not appropriate for other direct services contracts. The commenter suggests that the section be modified to allow an MHMRA to take into consideration the need for continuity when preparing to award future direct service contracts. Such a revision would not prohibit bidders from showing how the agency may better use public funds. The department refers the commenter to the addition of a definition of "renewal" in §401.373 and to the term "requirements" of §401.384(a)(2).

Concerning subsection (h) of the same section, a commenter made recommendations including making timelines "reasonable" in paragraph (1) and adding language to paragraph (3) that would permit timelines to be extended if deficiencies have not been recti-

fied. The department responds that exercise of judgment in setting and extending timelines is required and that the addition of language is not necessary.

With regard to §401.386(c), one commenter noted that if the department prohibits all start-up funding to subcontractors, it will be very difficult to make the kind of capital investments that are necessary to provide residential homes and for new providers to enter the Texas market. Also concerning the same subsection, a commenter noted that since state law does not prohibit start-up funding to subcontractors, or the use of start-up funds to purchase capital property and equipment, such practice should be permitted with TDMHMR approval. The department responds that contractors as defined within the subchapter are parties contracting directly with the department, e.g., central office or state facilities. A private provider so contracting could receive start-up funds. A private provider contracting with a community center is a subcontractor and could not receive start-up funds. The language of the bill indicates that start-up funding should be provided as a last resort and that the department is to develop provisions both relating to what the funds may be used for and relating to ownership of capital property and equipment purchased with start-up funds. Legislation does not require the department to provide start-up funds for capital property and equipment.

Concerning the same subsection, two commenters requested that provisions relating to start-up funding be deleted in entirety because the department loses leverage to enforce compliance with repayment. One commenter compared start-up funding to government-backed loan programs which have experienced high rates of nonrepayment. The commenter suggested that any business or individual needing start-up funds has not been able to secure funds from regular sources, does not have a firm financial base, and will, in all likelihood, be an undependable service provider. The other commenter noted that start-up funding promotes favoritism, and questioned the source of such funding in light of the fact that the legislature does not expressly appropriate funds for this purpose. The department acknowledges that start-up funds should only be made available as a last resort, when services are needed but are otherwise not available.

Regarding subsection (d) of the same section, a commenter noted that language regarding disposition of property has a typographical error and should say that it only applies to property purchased with funds from the department. The department responds that the words "at least" will be added with reference to the \$500 limit on nonconsumable goods. Language has been revised to indicate that the department exercises control over only that property and equipment that is purchased with funds received from or through TDMHMR.

Also regarding subsection (d), a commenter questioned why the policy for private non-profit and private for-profit entities differ. The department responds that the differentiation is consistent with governmental fiscal policy and that language has been clarified to address the issue.

A commenter noted that §401.389 and

§401.390 use vague and ambiguous language that could be perceived as in conflict with Senate Bill 1426. Another commenter noted that contract termination at will, as implied in §401.389(b), concerning contract termination, is directly in conflict with Senate Bill 1426, which requires mandatory renewal of contracts provided stipulated criteria are met. Another commenter noted that immediate contract termination should only occur when health and safety violations are so severe as to jeopardize the individuals served. Another commenter anticipated disputes arising from the vagueness of the language, especially the term "best interest," and recommended that language be revised to promote clarity and full accountability. It was further recommended that an additional section be included explaining what action will be taken to protect continuity of services to persons served in the event of immediate contract termination for any of the reasons in subsections (b), (c), or (d). Another commenter noted that the subsection as proposed allows too much discretion on the part of an MHMRA or the department. The department responds that the intent of the language is to protect the health, safety, and welfare of persons served, and that language in subsection (b) has been modified accordingly. Standard contracts and required contract provisions both include language concerning continuity of services that is reflected in §401.375(i).

A commenter noted that the cause for abeyance and removal of contractual rights should be explicit and that language relating to failure to perform, contained in §401.390, should be clarified. The department responds that subsection (a) generally describes what abeyance is; subsection (b) generally describes what removal means; subsection (c) explicitly states acceptable causes for removal; and subsection (d) states that abeyance may occur when the causes enumerated for removal may have occurred, and indicates how cause is established. Reference also subsection (d)(1): "Violations of contract provisions do not necessarily cause abeyance and/or removal of contractual rights. Depending upon circumstances, the department's options range from a notice to the contractor explaining the violation or cause and requiring corrective action to the removal of contractual rights." Note that Senate Bill 1426 requires the department to promulgate rules by which problems with providers will be handled (§401.384(h) and (i)). With regard to failure to perform, the department responds that the subsection has been clarified to indicate that intent relates to ongoing contract violations that continue to occur at time of determination of removal.

Concerning subsection (c) of the same section, a commenter noted that the term "agency" should be replaced with a more appropriate term. The department agrees and has substituted the term "organization."

With reference to subsection (f) of the same section, one commenter noted that hearing rights for abeyance and removal of contractual rights are not provided for offerors and bidders, and questioned whether the subsection violated the United States Constitution and Texas Constitution. Another commenter noted that the section in general would seem to deny certain due process rights to contractors by not allowing hearing and appeal opportunities to contractors. The department

responds that access to hearing is a right afforded to parties with whom a contractual relationship has been established. A contractual relationship is not in effect with offerors and bidders as described in the subsection.

A public hearing was held on July 7, 1989, at TDMHMR Central Office, Austin, to accept public testimony concerning the proposed new sections. Testimony was given by executive director, Abilene Regional MHMR Center, Abilene; business manager, Heart of Texas Regional MHMR Center; and attorney, Bethpage Inc., Austin.

Written comment concerning adoption of the proposed sections was received from Abilene Regional Center, Mental Health-Mental Retardation, Abilene; Bethpage Inc., Austin; advocates for persons with mental retardation, Dallas; the Texas Council of Community Mental Health and Mental Retardation Centers, Inc., Austin; Association for Retarded Citizens, Texas, Austin; MHMR of Southeast Texas, Beaumont; Advocacy, Inc., Austin; Educare Community Living Corporation-Texas, Austin; the Parents' Association for the Retarded of Texas; Tarrant County Mental Health/Mental Retardation Services, Fort Worth; and the Texas Association of Private ICF-MR Providers, Austin.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Acceptable bid or acceptable offer—A bid or offer which has been prepared and submitted according to the timeframes procedures, and format specified in the procurement package; which indicates the offeror can meet the minimum requirements specified in the procurement package; and which is made by an offeror who is legally eligible to receive state and/or federal funds.

Administrative law judge—An attorney appointed to preside at a hearing.

Adverse action—Any action in which the department:

(A) terminates or suspends a contract between a contractor and the department before the contract's stated expiration date;

(B) terminates or suspends payments in whole or part to a contractor;

(C) exacts financial penalties for contract or rules violations, including failure to submit timely written reports as required; or

(D) reduces a contractor's funds by 25% or more of the amount the department reimburses if the department

plans to allocate the withheld funds to another contractor for similar services in the same geographic area. This applies only if the contractor alleges that the reduction was in violation of department rules, was discriminatory, or was without reasonable basis in law or fact. It does not apply to funding or contracts subject to the department's competitive procurement rules.

Amendment—An attachment to a contract executed prior to the expiration of the contract term that alters or adds provisions. The signatures on the amendment must be original and must be of equal authority as the signatures on the contract being awarded.

Board—The Texas Board of Mental Health and Mental Retardation.

Community center—A community mental health and mental retardation center established under Texas Civil Statutes, Article 5547-201 et seq.

Consultant contract—A contract to retain the services of an individual or organization to study an existing or proposed operation or project, or to provide advice with regard to the operation or project consistent with Texas Civil Statutes, Article 6252-11c, to exclude engaging registered professional engineers or registered architects for the design or construction of state facilities; private legal counsel; investment counselors; actuaries; or physicians, dentists, or their medical or dental services providers.

Contract—Any written document (or series of documents) that obligates the department or the MHMRA to pay money to a person or organization in exchange for goods or services from that person or organization or that obligates the department or the MHMRA to provide goods or services in exchange for money.

Contract manager—A staff person designated to assume primary responsibility for protecting the interest of the department, the MHMRA, and the persons served in a contract by ensuring that the contractor/subcontractor complies with the terms, conditions, and specifications of the contract. Functions include communicating and coordinating with contractors/subcontractors and other department or MHMRA staff; monitoring contracts; modifying contracts and obtaining appropriate approvals; providing technical assistance; settling disputes and recommending adverse action, including termination, as appropriate; and ensuring fulfillment of plans of correction in keeping with designated time intervals. At central office, the contract manager is the staff so designated on the contract, except that for all contracts for services (performance contracts), the contract manager is the deputy commissioner appropriate to the programmatic area or his or her designee. Contract managers for facilities and MHMRAs are staff so designated on the contract.

Contract for services or performance contract—The contract between TDMHMR and a designated provider in which TDMHMR agrees to pay the designated

provider a specified sum in consideration for the provision of specified mental health and mental retardation services in a local service area pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-204.

Contractor—An entity that is party to a contract or seeks to become party to a contract with the department.

Department—A facility or the central office of the Texas Department of Mental Health and Mental Retardation.

Designated provider—Pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-204, a service provider with whom the department contracts for the delivery of community-based mental health or mental retardation services in a specified local service area of the state. The term includes, but is not limited to, community mental health and mental retardation centers. The term does not refer to departmental facility community-based services.

Direct services contract—A contract between the department and a contractor or an MHMRA and a subcontractor in which the contractor/subcontractor agrees to provide residential or nonresidential mental health or mental retardation services to individuals as designated by the department or the MHMRA. The term includes, but is not limited to, contracts for residential services, vocational training, and psychosocial programs, general hospital services agreements, and other contracts for direct services to individuals in the priority population. The term excludes all program contracts, including consultant contracts and professional services contracts, support services contracts, and contracts for services (performance contracts).

Disadvantaged business—A business as defined in the Appropriations Act, Article V, §118, to include businesses owned in majority or in full by one or more persons who are socially disadvantaged because of their identification as members of certain groups including black Americans, hispanic Americans, women, Asian Pacific Americans, and American Indians.

Emergency—A state of imminent peril to the health, safety, or welfare of employees, persons served, or the general public.

Employee—A person legally employed by TDMHMR or an MHMRA to perform the work of a position and being paid a salary, wage, or other form of compensation for personal services, e.g., stipend, or a person who has been employed in such capacity by TDMHMR or an MHMRA in the preceding 12 months.

Employee education and training contract—A contract to acquire professional expertise for in-facility or other in-house training of employees. The term does not refer to training sponsored by another organization at conferences, seminars, or training sessions.

Facility—Any state hospital, state school, state center, or other entity which is

now or is hereafter made a part of the Texas Department of Mental Health and Mental Retardation.

Financial or other interest—The condition that exists when an employee or officer of TDMHMR or an MHMRA who initiates or approves contracts has or intends employment with a contractor; paid consultation with a contractor; membership on a contractor's board of directors; or ownership of stock, partnership, or other monetary interest in a contracted agency, as defined in Texas Civil Statutes, Article 988b. The term also applies to the condition that exists when a person related within the second degree of consanguinity or affinity (as described in §401.391 of this title (relating to Exhibits, as Exhibit A)) to such an employee or officer participates in such activities.

Foster or family home placement—A residential placement where the caregiver or caregivers have no more than three unrelated persons with disabilities in their home at any given time and the caregiver or caregivers are providing this service in their primary residence.

General hospital services agreement—A contract between the department or the MHMRA and a contractor/subcontractor to provide inpatient and outpatient hospital services including 24-hour emergency room services and 24-hour physician coverage to all residential patients referred to the contractor/subcontractor by a department or MHMRA physician or department or MHMRA consultant physician.

Local match—Required local financial participation/contributions which represent on a contract-specific basis the amount of local funding the MHMRA commits to complement the TDMHMR funding for the contracted services, expressed in the contract as a dollar amount or as a funding percentage of the state general revenue contract for services funds, to include city government tax funds; county government tax funds; other tax funds, which are funds from other local taxing authorities such as a school district, a hospital district, etc.; patient fees insurance reimbursement, including reimbursement for patient services, drugs, and tuition from patient's resources and/or patient's personal insurance policies and sources such as a local school district (Senate Bill 230), COG, Champus, Veterans Administration, and other allowable city or county patient fee reimbursements; and miscellaneous income and contributions, including income from production income from work activities, transfers from reserve funds of local revenues, interest and rental income donations, contributions, and other non-taxing authority income or earnings; and in-kind goods and services.

Mental health and mental retardation authority (MHMRA)—A local service provider selected by the department to plan, facilitate, coordinate, or provide services to mentally ill and/or mentally retarded persons in a local service area; this includes designated providers and departmental fa-

cility community services programs.

Officer—A member of the Texas Board of Mental Health and Mental Retardation or a member of the governing board of the contract agency.

Plan of service—The systematic, organized compilation of information relevant to the services provided to an individual admitted for services provided by the department or an MHMRA, or provided by a contractor or subcontractor using funds received from or through TDMHMR.

Procurement package—The invitation for bids or request for proposals and any other associated documentation that serves to describe the requirements of the contract.

Professional services—Those services within the scope of the practice of accounting, architecture, optometry, medicine, or professional engineering as defined by state law, or services performed by any licensed architect, optometrist, physician, surgeon, certified public accountant, or professional engineer in connection with his professional employment or practice, as specified in Texas Civil Statutes, Article 664-4. Services within the scope of medicine include hospital services, nursing, physical therapy, and occupational therapy, and professional consultation relative to radiology, laboratory services, and pharmacy.

Program contract—A contract between the department and a contractor or between an MHMRA and a subcontractor to deliver mental health or mental retardation services to individuals or to provide consultation relative to the delivery of mental health or mental retardation services to individuals for a designated sum using TDMHMR funds. The term includes consultant contracts, professional contracts, and employee education and training contracts. The term excludes contracts for services (performance contracts), direct services contracts, and contracts for support services.

Renewal—For contracts executed prior to August 30, 1989, renewal is the issuance of a new contract to the same provider with no substantial modifications in quantity, type of service, or term of the previous contract. Existing contracts can be renewed for one term. For contracts executed on or after August 30, 1989, renewal refers to a provision that requires formal review at specific times during the contract term (typically on an annual basis) for the purpose of amending and/or continuing the contract. Renewal provisions are generally used in longer term contracts.

Small business—A corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated and has either fewer than 100 employees or less than \$1 million in annual gross receipts.

Subcontract—A contract between the party contracting with the department and the subcontractor which is paid for with funds from the contract with the department.

Support services contract—A contract between the department and a contractor or between an MHMRA and a subcontractor to provide specified ancillary and support services for a designated sum in areas including, but not limited to, laundry, house-keeping, grounds maintenance, plant maintenance, food service, vehicle maintenance, and technical services in radiology, laboratory services, and pharmacy.

Term—The period of time during which a contract is in effect and which is identified by starting and ending dates.

\$401.374. Principles of Contracting at TDMHMR.

(a) A fundamental principle of procurement by government agencies is to obtain the most effective use of public monies. This means that contracting is the preferred alternative to direct provision of government services when contracting obtains the same or higher quality of services at a lower cost than possible through governmental provision. To facilitate this, the department and the MHMRA conduct all procurements to promote maximum free and open competition whenever feasible.

(b) To provide a foundation for administering contracts funded in whole or part by or through TDMHMR, the department and the MHMRA must:

(1) consider the best interests of persons served, the public, and TDMHMR at all times;

(2) promote competition to the extent appropriate and allowable by state and federal laws and policies to secure a best price and quality and to provide opportunity for all qualified organizations or persons to apply to do business with the department or the MHMRA;

(3) use funds to meet only documented needs for authorized goods and services;

(4) base contract decisions on findings of fact appropriately documented and on good business practices and judgment;

(5) take reasonable steps to provide potential contractors/subcontractors fair and impartial treatment;

(6) take prudent steps to make purchases, within the limits of available funds, that are allowable, reasonable, and necessary considering price, quantity, and quality;

(7) require contract managers to identify contracts for which a personal, financial, or other conflict of interest exists and to request and receive reassignment of the contract without prejudice;

(8) take steps to enhance mutual understanding of the contract terms by parties to the contract;

(9) ensure that every contract or group of contracts is assigned to a depart-

ment or MHMRA's contract manager who ensures that the terms of the contract are met;

(10) take reasonable steps to inform contractors/subcontractors of their responsibilities and liabilities under contract;

(11) ensure that all agreements between contractual parties are in writing and in the contract or contract file as appropriate;

(12) make amendments to the contract only if they are legal and are approved by the parties to the contract;

(13) monitor the terms of the contract to determine if the contractor/subcontractor is meeting them;

(14) upon identifying a contractual problem, take appropriate corrective action to resolve the problem and other potential problems;

(15) expedite the settlement of disputes to limit liabilities incurred by the contractor/subcontractor and the department and the MHMRA; and

(16) release a contractor/subcontractor from liabilities incurred by violating the terms of the contract only if the reason is properly justified, documented, and approved by the department or the MHMRA.

\$401.375. General Requirements for the Department and MHMRAs.

(a) Unless otherwise noted, all programs funded by or through TDMHMR, including those operated or subcontracted by MHMRAs using TDMHMR or federal funds, are governed by this subchapter and, as applicable to the department, the *TDMHMR Contracts Manual*.

(1) The department and the MHMRA may implement additional requirements to meet the particular needs of certain program areas if those requirements are in writing and do not conflict with the provisions of this subchapter and, as applicable to the department, the *TDMHMR Contracts Manual*.

(2) Programs cannot implement policies and procedures that deviate from or alter the contract policy expressed in this subchapter and, as applicable to the department, the *TDMHMR Contracts Manual*.

(b) There must be some basis in state or federal law or regulation for the department or the MHMRA to provide a mental health or mental retardation service which is to be contracted in whole or part using TDMHMR or federal funds. The statutory authority must be referenced in the contract.

(c) The department and the MHMRA must ensure that small and disadvantaged business enterprises have an equal opportunity to compete for and to be selected for the award of contracts and subcontracts.

(1) The department and the MHMRA will include in all contracts language that states that the contractor/subcontractor will comply with the Civil Rights Act of 1964, as amended.

(2) The department and the MHMRA will include in all contracts language which states that the contractor/subcontractor will ensure that no person, on the basis of race, color, national origin, religion, sex, age, handicap, or political affiliation, will be excluded from participation in, be denied the benefits of, or be subject to discrimination under any of the policies of the Texas Board of Mental Health and Mental Retardation, including this subchapter, or the policies of the governing body of a designated provider.

(3) When offers to contract are equal in all respects, the department or the MHMRA gives preference to disadvantaged businesses and small businesses.

(d) Employees and officers of the department and the MHMRA must not participate in the selection, award, or administration of a contract paid with funds received from or through TDMHMR if a conflict of interest, real or apparent, is involved. A conflict of interest arises any time such an employee or officer has a financial interest or other interest, e.g., dual employment, in the entity selected for an award, and the existence of such conflict of interest will result in a voided contract.

(1) No officer or employee of a contractor/subcontractor may be employed by the department or the MHMRA.

(2) No officer or employee of the department or the MHMRA, and no member of the governing body of local agencies which designate members of the boards of trustees of a community center, may directly or indirectly receive any pecuniary interest from a contract entered by the department or the entity. For department employees and officers, the provisions of Texas Civil Statutes, Article 6252-9b, pertain. For employees and officers of MHMRAs that are community centers or other designated providers, exceptions may be granted with a recorded majority vote of the board of trustees, with the involved officers, if any, abstaining.

(e) The department or the MHMRA must specify in the procurement package and contract the nature of the financial penalties, if any, that will be exacted for failure to perform according to the terms of the contract.

(f) The department must use the standard contract forms as provided in the *TDMHMR Contracts Manual* and the MHMRA must use required contract provisions when specified by the department.

(1) For services for which a standard contract form or required contract provision is specified, contracts that do not meet the requirements will not be funded.

(2) The standard contract forms and required contract provisions may be modified to accommodate unique circumstances only as follows.

(A) Modifications may take the form of additional contract requirements, but may not delete or materially change the provisions of standard contract forms or required contract provisions.

(B) Any contract or contract amendment of any amount that modifies the provisions of a standard contract form or a required contract provision requires central office approval.

(g) If a contractor/subcontractor is required to comply with an additional requirement pursuant to compliance with standards, regulations, resolutions, settlements, or plans, and compliance results in a material change in the contractor's rights or obligations under the contract or places a significant financial burden on the contractor/subcontractor, the contractor/subcontractor may, upon giving 60 days' notice of such intention, be entitled to renegotiate the contract.

(h) The department and the MHMRA must ensure that all contracts specify a date of termination, a maximum allowable total payment for the contract term, and the method of payment. Contracts that do not have termination dates, maximums, and method of payment will not be approved for payment.

(i) If the department or the MHMRA determines that the contractor/subcontractor has placed the health or safety of any person served in immediate jeopardy, the department or the MHMRA will take such steps as are necessary to secure the person's health or safety, including, but not limited to, removal of the person served from the program or termination of the contract without prior notice. The department or the MHMRA shall ensure quality care during the transition from one provider to another.

(j) Each MHMRA or MRA that receives Prospective Payment Program (PPP) funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter. The department may not provide PPP funds to an MHMRA or MRA that fails to submit the quarterly reports required.

§401.376. General Requirements for Contractors.

(a) A contractor/subcontractor must comply with all applicable federal and state laws, rules, and regulations, and standards. Unless explicitly stated otherwise in this subchapter, a contractor/subcontractor will not be subject to the general personnel

rules, regulations, and policies which affect the activities of employees of the department or the MHMRA with which it contracts.

(b) A contractor/subcontractor must provide the department or the MHMRA with unrestricted access to all facilities, service providers, individuals served, records, data, and other information under the control of the contractor/subcontractor as necessary to enable the department or the MHMRA to audit, monitor, and review all financial and programmatic activities and services associated with the contract.

(c) A contractor/subcontractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the department or the MHMRA, including plans of service, for a period of five years unless otherwise specified by the department or the MHMRA in the contract.

(d) For the purpose of confidentiality of records identifying persons served, contractors and subcontractors are subject to the requirements of Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(e) A contractor/subcontractor must disclose to the department or the MHMRA if it is currently held in abeyance from or barred from the award of a federal or state contract. A contractor/subcontractor currently held in abeyance from or barred from the award of a federal or state contract may not contract or subcontract with the department or the MHMRA.

(f) The department or the MHMRA may refuse to enter into a contract or may terminate a contract if it determines that the contractor/subcontractor did not fully and accurately disclose the following information concerning persons convicted of crimes:

(1) the identity of any employee, officer, or other person directly or indirectly involved in the contract who has been convicted of a criminal offense related to any state or federally funded program;

(2) the identity of any employee, officer, or other person directly or indirectly involved in the contract who is in direct contact with persons served, who has been convicted of any crime annotated in Exhibit B, referred to in §401.391 of this title (relating to Exhibits).

(A) Should any person have such a conviction, the contractor shall, unless otherwise agreed to by the department or the MHMRA, immediately remove the individual from direct contact with persons served.

(B) If the contractor has such a conviction, the contract may be terminated without prior notice.

(g) For a period of one year following the date of termination of employment or service, former employees and officers of TDMHMR, the Texas Department of Human Services (TDHS), and community centers may not, directly or indirectly, attempt or aid in the attempt to procure a contract with TDMHMR or a community center in which the individual was employed or served if the contract relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(1) In this subsection, the term "employee" means a person who on the last date of employment was compensated at or above the amount designated for a Salary Group 17, Step 1, of the state position classification salary schedule, including a state employee who is exempt from the state position classification plan.

(2) This subsection does not apply to a former officer or employee if the person was employed by a state agency other than TDMHMR or TDHS or was employed by a community center other than a community center with which a contract is being sought.

(3) Violation of this subsection is a criminal offense.

(h) The contractor/subcontractor operating a Medicaid-contracted facility shall comply with federal regulations relative to supplementation for recipient-residents, as contained in Title 42 Code of Federal Regulation 447.15; Public Law 95-142 (Medicare-Medicaid Antifraud and Abuse Amendments); and TDHS-TDMHMR-TDH joint agency policy interpretations.

(i) Before a corporation's offer or contract renewal can be considered, the corporation must give the department or the MHMRA franchise tax certification. For-profit corporations subject to Texas' franchise tax must provide certification that their payments are current. All other corporations must certify that they are not subject to the franchise tax.

(1) If the contractor/subcontractor is or becomes delinquent in the payment of its Texas franchise tax, payment to the contractor/subcontractor may be withheld until such delinquency is remedied.

(2) Making a false certification is a material breach of contract and grounds for contract termination.

(j) A contractor/subcontractor must report to the department or the MHMRA allegations of abuse and neglect in compliance with federal and state law and departmental rules, as applicable, including, but not limited to, Chapter 404, Subchapter A of this title (relating to Client Abuse and Neglect in TDMHMR Facilities); or Chapter 404, Subchapter B of this title (relating to Client Abuse and Neglect in Community

Mental Health and Mental Retardation Centers); or Chapter 404, Subchapter C of this title (relating to Patient Abuse in Private Psychiatric Hospitals); or Chapter 404, Subchapter D of this title (relating to Client Abuse and Neglect in Registered Boarding Homes).

(k) A contractor/subcontractor must report to the department any allegation that a professional licensed or certified by the State of Texas and employed by the contractor/subcontractor has committed an action that constitutes a grounds for the denial or revocation of the certification or licensure, e.g., physicians, nurses, psychologists, etc., and the department must immediately submit a copy of the report to the appropriate state board.

§401.377. Criteria for Determination of Method of Procurement.

(a) Criteria for competitive procurement using sealed bids. In competitive sealed bids, the department or the MHMRA publicly solicits sealed bids from interested bidders through an invitation for bids (IFB). This method of procurement is typically used for contracts including, but not limited to, support services contracts. The department or the MHMRA awards a firm fixed-price contract (lump sum or unit price) to the lowest and best bidder whose bid conforms with all terms and conditions of the invitation for bids. Staff use competitive sealed bids when the following conditions exist:

(1) the exact specification for the service or product to be purchased is available;

(2) following advertising, two or more responsible bidders are willing and able to compete for the contract;

(3) the procurement lends itself to a firm fixed-price contract (unit rate or cost reimbursement with a maximum ~~not~~ to exceed the reimbursable amount);

(4) the contract can appropriately be awarded to a responsible bidder on the basis of the lowest price; and

(5) sufficient time is available for the department or the MHMRA to prepare specifications on which it can purchase the service and for bidders to prepare and submit bids.

(b) Criteria for competitive procurement using request for proposal. In competitive negotiation, the department or the MHMRA requests proposals from a number of sources by soliciting responses to a request for proposal (RFP). This method of procurement is typically used for contracts including, but not limited to, consultant contracts, direct services contracts, and employee education and training contracts. Contracts staff may use competitive negotiation if:

(1) the service to be purchased cannot be quantified and specified in terms of price alone; or

(2) negotiation is authorized by applicable law, rule, or regulation, e.g., the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-202, §2.13.

(c) Criteria for noncompetitive procurement (sole source contracting). In noncompetitive negotiation, the department or the MHMRA solicits an offer from only one source. Noncompetitive negotiation may be used only when the award of a contract is not feasible under competitive sealed bids or competitive negotiation RFP procedures. This method of procurement is always used for professional services contracts, contracts for services (performance contracts), and contracts for foster or family home placements, and may be used for other types of contracts that meet one or more of the following criteria:

(1) noncompetitive negotiation is authorized or required by law, rule, or regulation, e.g., Texas Civil Statutes, Article 664-4 prohibits contracting for professional services on a competitive bid basis;

(2) the contract is between governmental entities, e.g., a community center and a state facility;

(3) in an emergency, it is necessary to proceed without formal advertising because of the delay it causes;

(4) the material or service to be procured is available from only one source;

(5) no acceptable bids or offers, as defined in §401.373 of this title (relating to Definitions) using a competitive procurement method are received; or

(6) the purchases are for highly perishable material or medical supplies; or for services for which the prices are established by law; or for experimental, developmental, or research work.

§401.378. Requirements for Competitive Procurement: Competitive Sealed Bid and Competitive Negotiation (Request for Proposal).

(a) The provisions of this section apply to both forms of competitive procurement: competitive sealed bid and competitive negotiation.

(1) Additional requirements relative to competitive sealed bids are contained in §401.379 of this title (relating to Additional Requirements Specific To Competitive Procurement (Sealed Bid)).

(2) Additional requirements relative to competitive negotiation (RFP) are contained in §401.380 of this title (relating to Additional Requirements Specific To Competitive Procurement: Competitive Negotiation (Request for Proposal)).

(b) The department or the MHMRA must formally advertise procurements by publishing a notice of the intent to contract when the contract is to be awarded by competitive sealed bid or competitive negotiation.

(1) Staff must ensure that all solicitations (notice of intent to contract) contain the following minimum information:

(A) the service to be purchased;

(B) the geographic area to be served;

(C) funding limitations;

(D) method of payment;

(E) the beginning through the ending date of the contract;

(F) any limitations on who may submit an offer and any limitations in the services or products to be provided; and

(G) the place and method of obtaining a procurement package and the deadlines for obtaining and submitting it.

(2) Staff must attempt to reach as many potential contractors/subcontractors as possible.

(A) The department or the MHMRA must publicize a solicitation in one or more of the following ways:

(i) advertisement in local newspapers;

(ii) publication in the *Texas Register* for department consultant contracts as required in §401.383 of this title (relating to Requirements Specific to Type of Contract: Program Contracts);

(iii) announcements in professional association newsletters.

(B) The department or the MHMRA may additionally solicit offers through announcements by direct mail to all known potential contractors/subcontractors.

(C) The department or the MHMRA shall document all transactions concerning contracts.

(c) Persons who have questions about a procurement package must request the information according to the instructions in the package. Oral answers to questions about a procurement package are nonbinding. They are not official until released in writing.

(d) Unless information is exempted by the Texas Open Records Act, e.g., information which, if released, would give advantage to competitors or bidders, all information in an offer is confidential only until:

(1) bid opening; or

(2) the department or the MHMRA sends both written notification to the successful offeror(s) and written notification of nonselection to the unsuccessful offeror(s) concerning requests for proposal.

(e) The department or the MHMRA has the right to reject all bids/offers submitted in response to a solicitation. The department or the MHMRA may cancel a solicitation for any of the following reasons:

(1) funds to purchase goods or services are not available;

(2) the supplies or services are no longer required;

(3) the bids/offers received indicated that the services requested can be purchased by a different, less expensive method;

(4) all otherwise acceptable bids/offers received are for unreasonable prices;

(5) staff have good reason to believe during the course of the procurement that the bids/offers were collusive or were submitted in bad faith;

(6) none of the bids/offers is acceptable;

(7) the specifications and costs given in the IFB/RFP were inadequate, ambiguous, or otherwise deficient; or

(8) the responsible contracting authority determines cancellation is in the best interest of the department, the MHMRA, and the individuals to be served.

(f) The department or the MHMRA has the right to issue addenda prior to the closing date for bids/offers provided all bidders/offers are provided fair opportunity to respond. All such addenda become, upon issuance, an inseparable part of the specifications which must be met for the bid/offer to be considered.

(g) A solicitation suspended because of uncertainty in federal or state regulations, departmental policy or similar requirements may nevertheless be processed if the procurement is still in the best interest of the department, the MHMRA, and the individuals to be served, and uncertainties about purchasability are amenable resolved.

(h) The department or the MHMRA develops procurement packages based on a clear and accurate description of the services to be purchased. The department or the MHMRA must include in the package all requirements the offeror must fulfill for the proposals to be evaluated. In competi-

tive procurements, the department or the MHMRA may not include in the service descriptions any requirement which unduly restricts competition by eliminating or limiting potential contractors/subcontractors' participation in the procurement process.

(i) When responding to a solicitation, offerors must respond to all items, including those about their financial ability to perform.

(j) Upon written request, an unsuccessful offeror is entitled to receive information from the department or the MHMRA concerning why its offer was not accepted.

(k) If the department or the MHMRA receives fewer than two offers, staff should determine whether competition was inadequate and the reasons. The department or the MHMRA, however, may still award the contract.

(1) Corrections, deletions, or additions to offers may be made prior to the closing date for solicitations or the date for opening of bids. No oral, telephone, telegraphic, fax, E-mail, or other electronically transmitted corrections, deletions, or additions will be accepted. The offeror must submit either a comprehensive form for this purpose, if provided, or substitute pages in the appropriate number of copies with a letter documenting the changes and the specific pages for substitution. The signatures on the form or the letter must be original and must be of equal authority as the signatures on the offer.

(m) Corrections, deletions, or additions which affect the competitiveness of other offers will not be accepted.

(n) For withdrawals, the offeror must submit a letter prior to the closing date. The signature on the letter must be original and must be of equal authority as the signature on the offer.

(o) The department or the MHMRA must establish mechanisms beforehand for evaluating the offers, including ways of determining responsible offerors, providing information for debriefings, and selecting successful offeror(s) for contract award(s).

(p) If a procurement package is to be considered by the department or the MHMRA, the offeror must meet the department or the MHMRA requirements, demonstrate the ability to perform successfully and responsibly under the terms of the prospective contract, and submit the completed offer according to the timeframes, procedures, and format stipulated by the department or the MHMRA in the solicitation.

(q) The department or the MHMRA may validate any information in a bid or offer by using outside sources or materials.

(1) If the department or the MHMRA validates the information in one offer or application for a specific program site or project, it must apply the process

without providing unfair advantage to any offer or range of offers for that site or project.

(2) If validation discloses that information provided by an offeror is deliberately false, the offer will be ineligible for consideration.

(r) When the purpose of the procurement is to obtain community-based residential or nonresidential services for persons with mental illness or mental retardation (direct services contracts), the determination of the lowest and best bid or offer must address the offerors' response to the procurement package, including:

(1) price;

(2) the ability of the offeror to perform the contract and to provide the required services;

(3) whether the offeror can perform the contract or provide the services within the period required, without delay or interference;

(4) the offeror's history of compliance with the laws relating to the offeror's business operations and the affected services and whether the offeror is currently in compliance;

(5) whether the offeror's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the offeror;

(7) the character, responsibility, integrity, reputation, and experience of the offeror;

(8) the quality of the facilities and equipment available to or proposed by the offeror;

(9) the ability of the offeror to provide continuity of services; and

(10) the ability of the offeror to meet all applicable written departmental policies, principles, and regulations.

(s) Each offeror whose offer meets the screening requirements but is not selected for a contract is entitled to timely notification in writing that the offer is no longer being considered.

§401.379. Additional Requirements Specific to Competitive Procurement (Sealed Bid).

(a) Requirements for procurement using competitive sealed bids. At its discretion, the department or the MHMRA may require a bid bond, a certified check, or cashier's check drawn on a solvent bank in the State of Texas and made payable to the Texas Department of Mental Health and Mental Retardation or the MHMRA in an amount to be specified in the procurement package. The bid security shall be a guarantee, legally assigned without limitation, that

the bidder will, if awarded the contract, within a reasonable time of such award, furnish the performance/payment bond (if required) and execute a contract in full accordance with the proposal. No other form of security will be accepted.

(1) If the offer is not accepted within 60 days after the closing date for acceptance of bids, or upon the successful execution and delivery of contracted services, the bid bond, certified check, or cashier's check will be returned to the bidder.

(2) If the offer is accepted but the contractor/subcontractor through failure, neglect, or refusal does not execute and deliver according to the terms of the contract, the security will be retained by the department or the MHMRA to the measure of the liquidated damages.

(b) Procedures for awarding the contract.

(1) All bids received are opened at the same time in the presence of all interested persons. Bids are read aloud and recorded.

(2) After the public opening of the competitive sealed bids, anyone present may examine the bids in the presence of the department or the MHMRA's representative. Individuals may not inspect the original bids if copies of the bids are available for public inspection. If copies are unavailable, the original bids may be examined only under the supervision of an official of the department or the MHMRA and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration of the bids.

(3) Bids are evaluated only on the basis that they meet the specific requirements of the invitation for bids. All bids meeting the exact service specifications are rated in terms of cost or cost and other factors as designated in the specifications.

(4) The department or the MHMRA awards the contract to a bidder who is both responsive and responsible and who has the lowest and best bid consistent with terms and conditions of the invitation for bids. The contract is not necessarily awarded at the time of bid opening.

(5) When two or more low bids are equal in all respects, lots will be drawn, duly recorded, and witnessed.

(6) No negotiation is used in the competitive bid method.

§401.381. Requirements for Noncompetitive Procurement: Noncompetitive Negotiation (Sole Source Contracting).

(a) The department or the MHMRA may validate any information in an offer by using outside sources or materials. If validation discloses that information provided by an offeror is deliberately false, the offer will be ineligible for consideration.

(b) The department or the MHMRA must justify and document awarding a sole source contract funded by or through TDMHMR to a contractor/subcontractor. Documentation must accurately and concisely substantiate the necessity for a sole source contract on the basis of one or more of the reasons listed in §401.377(c) of this title (relating to Criteria for Determination of Method of Procurement).

§401.382. Requirements Specific to Type of Contract: Support Services Contracts.

(a) Pursuant to Texas Civil Statutes, Article 601b, department support services contracts and purchases governed by the rules, regulations, and procedures manual of the State Purchasing and General Services Commission and the TDMHMR Supply Manual are exempted from the requirements of this subchapter. All other department purchases and contracts are governed by this subchapter.

(b) MHMRAs that are community centers or designated providers must submit to the department a written assurance signed by the chairman of the board of trustees or the governing body which states either that the board of trustees or the governing body has established policies and procedures for purchasing support services and goods that protect the interests of the State of Texas and applicable agencies, e.g., county government, city government, or that the board of trustees or the governing body agrees to adopt and abide by the regulations and procedures of the State Purchasing and General Services Commission. If the chairman of the board of trustees or governing body states that local policies and procedures have been adopted, the chairman of the board of trustees or governing body shall also certify in writing that said policies and procedures are in accord with generally acknowledged and acceptable business practices.

§401.383. Requirements Specific to Type of Contract: Program Contracts.

(a) Consultant contracts. The term of a consultant contract shall not exceed two years. Department contracts that exceed two years require approval through the Office of Contracts Management. Contracts that exceed two years by MHMRAs that are community centers or other designated providers require approval through a recorded majority vote of the board of trustees or governing body.

(1) Requirements for the department.

(A) Facilities must submit the following contracts and contract amendments to the Office of Contracts Management to be approved by the appropriate central office authorities prior to execution:

(i) contracts or contract amendments through which the department

will pay the consultant more than \$10,000 in a fiscal year;

(ii) contracts or contract amendments in which the consultant will be paid more than \$65/hour; or

(iii) contracts or contract amendments in which the consultant will be paid more than \$400 in a 24-hour period.

(B) Central office staff must submit all consultant contracts and amendments to the Office of Contracts Management to be approved by appropriate central office authorities prior to execution.

(C) The Office of Contracts Management must coordinate the *Texas Register* publication of the solicitation, the finding of fact requirements, and the award of the contract for all department contracts and contract amendments in which the consultant will be paid more than \$10,000 in a fiscal year. Existing contracts for more than \$10,000 may be extended or otherwise amended without advertising if both the department and the contractor agree and the department does not incur additional costs from the contractor.

(D) Verification that contracted services were provided as required must be documented in the contract file. For services provided on an hourly or other unit basis, each consultant and a responsible staff member who can certify to the presence and the duties performed by the consultant will record the information required on the "Independent Contractor (Consultant) Log," which is referenced in §401.391 of this title (relating to Exhibits) as Exhibit C. The consultant and responsible staff member must sign the form, which becomes a part of the contract file.

(2) Requirements for community centers. Community centers should adhere to the guidelines of Texas Civil Statutes, Article 6252-11c to determine when to bid a consulting contract. Provisions for *Texas Register* publication, and finding of fact will not apply.

(b) Professional services contracts. The term of a professional services contract shall not exceed two years. Department contracts that exceed two years require approval through the Office of Contracts Management. Contracts that exceed two years by MHMRAs that are community centers or other designated providers require approval through a recorded majority vote of the board of trustees or governing body.

(1) Requirements for the department.

(A) Facilities must submit the following contracts and contract amendments to the Office of Contracts Manage-

ment to be approved by the appropriate central office authorities prior to execution.

(i) contracts or contract amendments through which the department will pay the contractor more than \$10,000 in a fiscal year;

(ii) contracts or contract amendments in which the contractor will be paid more than \$65/hour; or

(iii) contracts or contract amendments in which the contractor will be paid more than \$400 in a 24-hour period.

(B) Central office must submit all professional services contracts and amendments to the Office of Contracts Management to be approved by appropriate central office authorities prior to execution.

(C) Verification that contracted services were provided as required must be documented in the contract file. For services to persons with mental illness or mental retardation provided on an hourly or other unit basis, each contractor and a responsible staff member who can certify to the presence and the duties performed by the contractor will record the information required on a "Professional Services Log," which is referenced in §401.391 of this title (relating to Exhibits) as Exhibit D.

(i) The contractor and responsible staff member must sign the form, which becomes a part of the contract file.

(ii) For contractors who perform services involving large numbers of persons with mental illness or mental retardation, the file and file location of individual case numbers of persons seen may be referenced rather than listed in full. If case numbers are referenced to another file, that file must be readily accessible.

(D) In cases of emergency medical treatment or required nonemergency surgical procedures performed off campus or on campus, the mandatory prior approval required in subsection (b)(1) of this subsection is waived. In such cases, the fees paid shall not exceed those normally charged for the service in the area in which the services are provided.

(E) Contracts for professional services may not be procured through the use of bids.

(2) Requirements for community centers. Community centers should adhere to the guidelines of Texas Civil Statutes, Article 664-4, to determine when a professional services contract is required.

(c) Employee education and training contract. The term of an employee education and training contract shall not exceed two years. Department contracts that exceed two years require approval through the Of-

fice of Contracts Management. Contracts that exceed two years by MHMRAs that are community centers or other designated providers require approval through a recorded majority vote of the board of trustees or governing body.

(1) Requirements for the department.

(A) Prior to execution, facilities must submit to the Office of Contracts Management for approval any contract or contract amendments through which the department will pay the contractor more than \$10,000 annually.

(B) Central office staff must submit to the Office of Contracts Management all contracts and contract amendments to be approved by appropriate central office authorities prior to execution.

(C) Employee education and training contracts may be procured using a method other than sealed bid.

(2) Requirements for community centers. Community centers should adhere to the provision of Texas Civil Statutes, Article 6252-11a, when obtaining education and training contracts.

§401.384. Requirements Specific to Type of Contract: Direct Services Contracts.

(a) The method of procurement of all direct services contracts must be in compliance with §401.377 of this title (relating to Criteria for Determination Of Method Of Procurement).

(1) The term of a residential direct services contract shall not exceed five years. Department contracts that exceed five years require approval through the Office of Contracts Management. Contracts that exceed five years by MHMRAs that are community centers or other designated providers require approval through a recorded majority vote of the board of trustees or governing body.

(2) The term of a nonresidential direct services contract shall not exceed two years. Department contracts that exceed two years require approval through the Office of Contracts Management. Contracts that exceed two years by MHMRAs that are community centers or other designated providers require approval through a recorded majority vote of the board of trustees or governing body.

(b) The department or the MHMRA must require the contractor/subcontractor to:

(1) comply with the person's treatment plan, including ensuring consultants are knowledgeable of the plan within 45 days of placement and that staff providing direct care receive training necessary to

implement the plan in accordance with the terms of the contract; and

(2) comply with specified rules and standards governing services to persons with mental illness or mental retardation.

(c) Prior to execution of the contract, an MHMRA that is a state facility must submit to the Office of Contracts Management for approval by the appropriate central office authorities any contract or contract amendment through which the department will pay the contractor more than \$25,000 in a fiscal year. An MHMRA that is not a state facility is not required to submit such contracts for central office approval.

(d) Contractors/subcontractors for residential services must sign an acknowledgement of awareness of applicable federal and state rules, regulations, laws, and executive orders that govern the provision of services to persons with mental illness or mental retardation using the form referenced in §401.391 of this title (relating to Exhibits), as Exhibit E.

(e) Contractors/subcontractors must provide insurance, including liability coverage, for the residence or other structure and its contents and any vehicles used to transport persons with mental illness or mental retardation.

(f) Contractors/subcontractors providing residential services will assume fiduciary responsibility for trust funds of persons served, unless otherwise specified in the contract requirement. Prior to executing a residential contract, the contractor/subcontractor must submit for central office approval a written policy and procedure to protect and account for trust funds according to generally accepted accounting principles and applicable laws, rules, and standards, including, as applicable, §405.625 of this title (relating to Rights of Clients Receiving Residential Mental Retardation Services) and §407.2 of this title (relating to Trust Funds and Personal Effects). Any amendments to the trust fund policy and procedure must be submitted to central office for approval prior to implementation.

(g) To facilitate continuity of services and to prevent disruption of services, the MHMRA shall not require competitive bidding on the renewal of a direct services contract.

(1) If funding is available and if the MHMRA plans to continue the services, when a contract is scheduled for renewal, the MHMRA shall review the contract and shall renew the contract if the MHMRA finds that:

(A) the contractor/subcontractor is in substantial compliance with each material provision of the contract, unless the MHMRA determines and documents that the provision is not legal and

enforceable under applicable state and federal law;

(B) the contractor/subcontractor is providing a reasonably adequate level of service in accordance with the contract;

(C) the contractor/subcontractor agrees to a renewal contract that is substantially in compliance with a standard contract developed by the department;

(D) the contractor/subcontractor was during the term of any contract with the MHMRA and is at the time of renewal in compliance with applicable laws governing the subject matter of the contract; and

(E) neither the contractor/subcontractor nor any of its officers, directors, or principal employees has been convicted or found by a final administrative decision to have been guilty of fraud or abuse in the provision of health care services under a contract with a state or federal agency.

(2) The MHMRA and contractor/subcontractor shall negotiate a contract renewal at arms length and in good faith.

(h) In the event that the MHMRA determines that the contractor/subcontractor is not fulfilling its contractual obligations, the head of the MHMRA shall send the contractor/subcontractor notice describing the nature of the deficiencies. If the MHMRA determines that a more immediate form of notice is required, notice may be provided by telegram or fax.

(1) The notice includes enough details of the contractor/subcontractor's noncompliance with the provision of the contract, unsuccessful efforts at resolution, or other basis for potential termination of the contract to enable the contractor/subcontractor to rectify the identified problems. The notice also provides a timeline for rectification of the problem. The head of the MHMRA shall also send a copy of the notice to the appropriate assistant deputy commissioner(s) in central office.

(2) The MHMRA shall closely monitor the progress of the contractor/subcontractor in rectifying the identified deficiencies.

(3) If, by the time specified in the notice, the contractor/subcontractor has not rectified the identified deficiencies, the head of the MHMRA shall send notification of contract termination by certified mail, return receipt requested, to the contractor/subcontractor, and shall also send a copy of the notification of contract termination to the appropriate assistant deputy commissioner(s) in central office.

(4) Nothing in this subsection is meant to abridge the right of the MHMRA

to terminate a contract without notice when the life, health, or safety of individuals served is endangered.

(i) If the MHMRA fails to resolve problems relative to the contractor/subcontractor's noncompliance with the terms of the contract or fails to terminate the contract, as appropriate, the department may exercise its option to withhold funds from the MHMRA.

(j) Upon termination of the contract, the contractor/subcontractor shall immediately return the individual and the individual's personal belongings, and records to the department or the MHMRA.

(k) Quality care must be maintained for all persons served during the transition from one provider to another.

§401.385. Requirements Specific to Type of Contract: Contracts for Services (Performance Contracts).

(a) The department shall identify and contract with one or more designated providers to ensure the provision of the following services for each local service area, as appropriate to the nature of services delivered, whether mental health and/or mental retardation services:

(1) 24-hour emergency screening and rapid crisis stabilization services;

(2) community-based crisis residential service or hospitalization;

(3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4) family support services, including respite care;

(5) case management services;

(6) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication;

(7) psychosocial rehabilitation, including social support activities, independent living skills, and vocational training;

(8) aftercare services or continuity of care, including the assignment of a case manager, for individuals discharged from TDMHMR facilities; and

(9) other direct or indirect services as determined necessary and appropriate by the department.

(b) In identifying designated providers for service areas served by community centers, preference shall be given to community centers. The department may identify other local agencies, private providers or organizations to serve as the designated provider or as an additional designated provider for a service area if any one of the following circumstances occurs:

(1) the department is unable to negotiate a satisfactory contract with a community center for any or all services to be provided to the extent and in a manner necessary to accomplish the purposes of the contract;

(2) the department determines that a community center does not have the capacity to ensure the availability of any or all services that the department intends to provide;

(3) the department determines that a community center is not in compliance with the contract for services and the arrangement is terminated in accordance with applicable clauses of the contract for services and this subchapter; or

(4) there are no community centers in a service area.

(c) When circumstances require more than a single designated provider for MR services or more than a single designated provider for MH services in a service area, the funds identified for that service area will be contractually available to the designated providers in proportion to the services that the department requires to be performed by the respective providers.

(d) In the event the conditions described in subsections (b) or (c) of this section should occur, the department may use competitive or noncompetitive methods of procurement to designate other providers to deliver specified services.

(e) Contracts for services shall be negotiated to ensure compliance with the legislative intent of the current appropriations bill.

(f) Each designated provider shall provide, either directly or by subcontract, specific performance outcomes or services to address the needs of the priority populations as required by the department. Allocations shall be guided by consideration of needs of the severely mentally disabled who are the department's priority population and by the performance of local authorities in meeting needs. Contracts based on specific need indicators and performance factors shall be favored.

(1) Factors to determine need may include, but are not limited to:

(A) population;

(B) population density;

(C) poverty and other socioeconomic factors;

(D) numbers of members of the priority population; and

(E) availability, or lack of, other community resources to share the burden of care.

(2) Factors to determine performance may include, but are not limited to:

(A) number of priority population served;

(B) efficiency and effectiveness in the use of resources;

(C) local contributions to services from taxes, fees, and other sources;

(D) quality of care provided;

(E) use of state facilities by local citizens; and

(F) other departmental funds or programs available to the local area.

(g) The term of a contract for services shall not exceed two years without approval through the Office of Contracts Management. The commissioner shall not renew a contract or shall terminate a contract with a designated provider and shall select other agencies, providers, or organizations to be the designated provider if an evaluation of the original provider's performance by the department indicates an inability to ensure the availability of the specific services to priority populations as required by the department.

(h) Quality care must be maintained for all persons served during the transition from one designated provider to another.

(i) The department may include in the terms of its contract with a designated provider a requirement that some or all of the state funds be matched by local support in such proportions and amounts as may be determined by the department. If local match is specified, it shall be uniformly required of all designated providers in the service area. Contracts for services with designated providers requiring local match for funding must state the amount directly supporting the service being purchased.

(1) The department shall biennially determine the amount of local match required, which in no case shall be less than 10% nor more than 30% of the amount of TDMHMR funds. The amount of local match shall be determined using economic indices available which are generally relied upon to indicate the financial ability of a local community to support public services to its citizens. Local match recognized by the department is limited to the following:

(A) allowable cash expenditures by the contractor directly related to providing service to eligible persons with mental illness or mental retardation under the terms of the contract; and

(B) noncash expenditures limited to in-kind goods and services subject to the terms of the contract.

(2) On each annual report that the designated provider submits to the department, the provider must certify the amount of local match for the period covered by the report.

(j) No person shall be denied services due to inability to pay for such services. The designated provider must provide the services specified in the contract for services to members of the priority population without regard to the individual's ability to pay. Reasonable fees to cover costs for services provided shall be charged, except where prohibited by other service contracts or law. Records shall be kept which indicate:

(1) whether services provided each person served were at no cost or whether a fee was charged for such services and the amount assessed; and

(2) if charges were assessed, the condition of the account.

(k) Contracts for services shall be between the commissioner and the board of trustees of the community center or between the commissioner and the governing body or chief executive officer of other designated providers.

\$401.386. Fiscal Policy.

(a) Advance payments. The department may make advance payments to contractors provided that the contractor is a community mental health and mental retardation center or governmental entity; funds designated for advance payments are available for the department to make advance payments to contractors; and the contractor uses the advance payments for operating expenses allowed under an existing contract to provide services to eligible persons with mental illness or mental retardation.

(1) A contract must be in effect before the department makes an advance payment.

(2) The advance payment for each specific contract is based on need and must not be more than the contractor's allowable reimbursable expenditures for one quarter of the fiscal year. Designated providers may submit a quarterly request approximating 25% of the provider's annual funding allocation, but in no event may submit a request for more than 30% of the annual allocation in any quarter and not more than 80% of the annual allocation in the first three quarters of the fiscal year. Quarterly requests shall be made on a State of Texas purchase voucher in a form to be prescribed by the department.

(3) The department may adjust the advance payment amount based on the contractor's cash outflow and service level variations.

(4) The contractor must liquidate the advance payment either at the end of each contract period consistent with the terms of each specific contract or at other times determined necessary by the department.

(5) The department stops making advance payments to a contractor if the contractor has not liquidated the advance payment for the previously contracted period according to the terms of the contract.

(6) The contractor shall not make advance payments to subcontractors for services with the exception of other governmental entities whose advance payments may not exceed one quarter.

(b) Cost reimbursement. In a cost reimbursement contract, the department or the MHMRA monitors the contractor/subcontractor's internal processes and budgeted items that result in service delivery to individuals and other services. The contractor/subcontractor must substantiate all claims.

(c) Start-up funds. Every effort should be made to contract with contractors who will not require the department to provide start-up funds. As a last resort, contractors who are expanding into a new service area or are just beginning to provide services may, if allowed by program-specific policy and with appropriate TDMHMR approvals, budget and bill for start-up costs. Start-up funds shall be used for operating costs, such as hiring and orienting staff, purchasing supplies, utilities, maintenance and repairs, and recruiting eligible persons with mental illness or mental retardation. Start-up funds shall not be used to purchase capital property or equipment.

(1) If a contractor who requires start-up funds does not receive required licensure, accreditation, and/or certification to provide contracted services within the timeframe designated in the contract, no start-up funds are allowed.

(2) The contractor shall not provide start-up funding using TDMHMR funds to subcontractors.

(3) The contractor will provide documentation to support the amount of start-up funds requested. Justification should be adequately documented to include a projected cash flow analysis.

(4) The contractor must repay the start-up funds according to the terms of the contract, either by direct repayment or by providing services for a period designated in the contract.

(d) Disposition of property. Equipment and furniture are defined as non-consumable property having a value of at least \$500 and a useful life of more than one year. Equipment and furniture specifically purchased under a contract budget by a governmental entity, a private non-profit

entity, or private for-profit entity are subject to an equitable claim by state and federal government as follows:

(1) Disposition of property purchased by governmental and private non-profit entities.

(A) Control of equipment and furniture. A control system must be maintained by the contractor to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated. The control system must indicate the source of funds (state, federal, other) used in the purchase of the equipment and furniture.

(B) Disposition of property. Equipment and furniture purchased with state funds by a designated provider and/or other governmental entities become the property of the designated provider and/or other governmental entity. Disposition of equipment and furniture purchased with federal funds by a designated provider and/or other governmental entity must be made according to the provision of federal OMB A-102 and any other applicable federal regulations. Any equipment and furniture purchased by a private non-profit provider which are purchased with funds provided by or through TDMHMR and which are specifically required in the contract to be purchased with contract funds belong to the department and cannot be disposed without approval from the department.

(2) Disposition of property purchased by private for-profit entities. The purchase of equipment and furniture by private for-profit entities under a specific contract budget should not be approved but such entity should include the depreciation of furniture and equipment as costs of providing the services under the contract.

(e) Designating source of contract funds. The department must specify in the contract the facility, program, and responsibility center to which contract costs will be charged, and the designation must be signed by the person responsible for managing the budget of the responsibility center.

(f) Recoupment of improper payments. The department or the MHMRA recovers improper payments when it is verified that contractors/subcontractors have been overpaid because of improper billing or accounting practices or failure to comply with the contract terms, e.g., the department or the MHMRA will not pay for contracted services not received, and repayment will be claimed, at the proportional daily rate of payment, for such days. The determination of impropriety is based on federal, state, and local laws and rules; department procedures; contract provisions; or statistical data on program use compiled from paid claims.

(1) The contractor/subcontractor is notified in writing of the types of discrep-

ancies, the method of computing the reasonable dollar amount to be refunded, and any other actions the department or the MHMRA may take.

(2) The contractor may request that the department's Office of Internal Audit conduct an audit of 100% of the records or conduct an additional audit of the records by sampling, which work may be performed by the Office of Internal Audit, or, at its discretion, by consulting auditors. The contractor may also request a presentation of the audit results at a hearing with the department. When a contractor requests additional audit work, he must agree to pay the costs to the department of performing the work.

(g) Recoupment of unencumbered funds. At the end of each contract period, the community center or the designated provider must return to the department any state or federal funds received from or through TDMHMR which have not been encumbered for contracted services.

§401.388. Administrative Hearing to Contest Adverse Action.

(a) A contractor has the right to a hearing on any adverse action as defined in §401.373 of this title (relating to Definitions). The notice of adverse action must include its effective date and notice of the contractor's right to appeal the adverse action.

(1) A contractor must file a written request for a hearing so that the department receives it within 15 days after the contractor receives the department's official notice of action. The request for the hearing must be addressed to the commissioner. The request for the hearing may be in the form of a petition or a letter. It must state the reasons the contractor considers he should not be subject to the adverse action.

(2) Upon receipt of the contractor's written request for a hearing, the matter will be referred to the administrative law judge, also known as the hearing officer, for disposition according to Chapter 403, Subchapter 0 of this title (relating to Administrative Hearings of the Department in Contested Cases).

(3) If a request does not state specific reasons, the administrative law judge, on his own motion or a motion from the department representative, may order the contractor to file a written statement of the specific reasons or show good cause why the reasons cannot be stated.

(b) Contracts with contractors may be cancelled before the completion of the hearing process.

(c) At any time before the conclusion of the hearing, the petitioner may submit written notification to the department of withdrawal of the hearing request. Informal disposition may be made of any case by

written stipulation, agreed settlement, consent order, or default.

(d) The department may exercise the option to withhold payment on all or a portion of a contract pending a hearing decision.

§401.389. Contract Terminations.

(a) Terminations of contracts occur when the term of the contract expires, both parties mutually agree to end the contract, and/or when either party terminates a contract because of irreconcilable differences.

(b) Nothing in this section is meant to abridge the rights of the department or the MHMRA to terminate a contract without notice when the life, health, or safety of individuals served is endangered.

(c) The department or the MHMRA may immediately terminate a contract for cause.

(1) Termination for cause is the contractual right to terminate, in whole or in part, the contractor/subcontractor's right to proceed with contract by reason of the contractor/subcontractor's failure to perform obligations under the contract. Included are failure to:

(A) deliver supplies or perform services within the time specified in the contract;

(B) perform any other provision of the contract; or

(C) progress, thus endangering the performance of the contract.

(2) Under a termination for cause, the department or the MHMRA is not liable for the contractor/subcontractor's costs on undelivered work.

(3) Upon termination for cause the department or the MHMRA is entitled to the repayment of any advance payments or other payments for such work.

(4) The department may elect to require the contractor to transfer title and deliver to the department completed supplies and materials in the manner and to the extent directed by the commissioner or his designee.

(d) Either party, unless stated differently in the contract, may terminate the contract at will if the other party is given a written notice of termination at least 31 days before the termination date.

(e) The department or the MHMRA may terminate a contract for default if the contractor/subcontractor submits falsified documents or fraudulent billings or makes false statements.

(f) When a contract is terminated, a fiscal audit is conducted as necessary to

determine any over- or underpayment. Disposition of equipment purchased under contract with the department will be subject to disposition according to departmental determinations.

(g) The contractor/subcontractor is responsible for establishing proof of the amount claimed to be due for settlement of a terminated contract to the department or the MHMRA's satisfaction by submitting sufficient proof.

(h) The department or the MHMRA must give the contractor/subcontractor no less than 15 days notice by certified mail (return receipt requested) to submit on or before a stated date written evidence substantiating the claim amount before issuing a determination of the settlement amount.

(i) Upon termination of a contract between the department and a contractor or between the MHMRA and a subcontractor, the contractor/subcontractor is responsible for the prompt settlement of the termination claims, including claims from employees, subcontractors, and vendors.

§401.390. Abeyance and Removal of Current or Potential Contractual Rights.

(a) Abeyance is a pending status. It may be imposed immediately, as appropriate, by the department upon a contractor's right to conduct a contract or a potential contractor's right to make an offer or bid for a department contract until an investigation, hearing or trial result is concluded and the department can make a determination about the contractor's or potential contractor's right to contract or subcontract.

(1) The department may withhold payments to a contractor during the abeyance.

(2) If the final determination is favorable to the contractor, the department must, if applicable:

(A) pay the withheld payments for any services that were provided during the abeyance; and

(B) resume contract payments.

(b) Removal of contractual rights by the department is the abrogation of rights to conduct a contract or to make an offer or bid for a department contract. The removal is for a reasonable and specified time and commensurate with the seriousness of the cause for removing contractual rights. Removal of rights may, but does not have to, be limited to those components of the contractor or potential contractor involved in the conduct leading to removal of rights.

(c) The department is authorized to remove contractual rights from an organization or individual for causes including, but not limited to, the following:

(1) pleading guilty or nolo contendere, receiving a deferred adjudication, or being found guilty in a court judgment for a violation relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) the Organized Crime Control Act of 1970, embezzlement, theft, forgery, bribery, falsification or destruction of records, other forms of fraud, receipt of stolen property, moral turpitude, or any other offense indicating a lack of business integrity or honesty that seriously and directly affects the question of responsibility as a contractor with the department;

(C) dangerous drugs, controlled substances, or other drug-related offense;

(D) federal antitrust statutes arising from the submission of bids or proposals.

(2) violating contract provisions including:

(A) failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in the contract, including but not limited to the following:

(i) failing to abide by applicable federal and state statutes, such as those regarding handicapped persons and civil rights;

(ii) failing to meet standards that are required by state or federal law, department rule, or department policy concerning contractors;

(iii) failing to execute amendments, if required in the contract;

(iv) billing for services or merchandise not provided to persons served;

(v) submitting cost reports containing costs not associated with and/or not covered by the contract;

(vi) submitting a false statement or misrepresentation which, if used, may increase individual or statewide rates or fees;

(vii) charging fees to persons served contrary to TDMHMR rules or policy;

(viii) failing to notify and reimburse the department for services the department paid for when the contractor received reimbursement from a liable third party;

(ix) failing to disclose or make available, upon demand, to the de-

partment or representatives (including appropriate federal and state agencies) any records the contractor is required to maintain;

(x) failing to provide and maintain services within standards required by statute, regulation, or contract;

(xi) violating the Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201, et seq.) provisions applicable to the contract or any rule or regulation issued under the act;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts if that failure or unsatisfactory performance has occurred within five years or two contracting periods (preceding the determination to remove contractual rights) for long-term contracts, with failure to perform or unsatisfactory performance in evidence at time of determination to remove contractual rights. Failure to perform and unsatisfactory performance includes, but is not limited to, the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from the department; and

(ii) failing to repay or make and follow through with arrangements satisfactory to the department to repay identified overpayment or other erroneous payments;

(C) rebating or accepting a fee or part of a fee in violation of contractual provisions.

(3) submitting an offer or bid that contains a false statement or misrepresentation or omits pertinent facts or documents material to the procurement;

(4) any other cause affecting the contractor's or potential contractor's responsibility of such a serious nature that the commissioner or his designee determines it to warrant removal of contractual rights. Grounds include, but are not limited to, engaging in any abusive or neglectful practice that results in or could result in death or injury to persons served by the contractor;

(5) removal of contractual rights by some other state or federal agency.

(d) The department may place a contractor's or potential contractor's contractual rights in abeyance whenever the department finds that there is a reasonable basis to believe that grounds for removal of contractual rights exist. In addition, abeyance may be imposed on a potential contractor if he has an outstanding indictment for an offense that is grounds for removal of contractual rights. The following conditions for removal of contractual rights apply.

(1) Violations of contract provisions do not necessarily cause abeyance and/or removal of contractual rights. Depending upon circumstances, the department's options range from a notice to the contractor explaining the violation or cause and requiring corrective actions to the removal of contractual rights.

(A) Causes in subsection (c)(1) of this section are established by proof of pleading guilty or nolo contendere, receiving a deferred adjudication of guilt, or being a defendant in a court judgment of guilt for violations relating to charges enumerated in subsection (c)(1) of this section. If an appeal results in a reversal, contractual rights must be restored upon written request, unless another cause for their removal exists.

(B) The existence of causes for removal of contractual rights in subsections (c)(2)-(4) of this section must be established by a preponderance of the evidence.

(2) Removal of contractual rights because another state or federal agency has removed contractual rights is based entirely upon the initial agency's official notice that the rights have been removed.

(e) Contractors who have been placed in abeyance or who have had their contractual rights removed have all the rights in Chapter 403, Subchapter 9 of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases).

(f) Offerors and bidders found ineligible for a contract, who are placed in abeyance, or who have their contractual rights removed do not have a right to a hearing.

(g) In addition to the information required in the notice of adverse action, the required content for notices of abeyance and removal of contractual rights includes:

(1) the grounds for the actions. If an indictment filed by the department is underway, the nature of the irregularities is described in general terms without disclosing evidences;

(2) the length of the abeyance or removal of contractual rights;

(3) a statement that responses to RFPs, IFBs, and other proposals will not be accepted or approved; and

(4) a statement of whether the abeyance or removal of contractual rights is in effect throughout the department and for all MHMRAs.

(h) The department may impose additional program-specific requirements if the requirements do not conflict with the abeyance and removal of contractual rights

requirements in this section.

\$401.392. References. The following laws and rules are referred to in this subchapter:

(1) Civil Rights Act of 1964, as amended;

(2) Organized Crime Control Act of 1970;

(3) Title 42 Code of Federal Regulations 447.15;

(4) Public Law 95-142,

(5) Appropriations Act of 1989, Article V, §118;

(6) Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq.;

(7) Texas Civil Statutes, Article 601b;

(8) Texas Civil Statutes, Article 664-4;

(9) Texas Civil Statutes, Article 988b;

(10) Texas Civil Statutes, Article 6252-9b;

(11) Texas Civil Statutes, Article 6252-11a;

(12) Texas Civil Statutes, Article 6252-11c;

(13) Texas Medical Practices Act;

(14) Texas Open Records Act;

(15) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information)

(16) Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases);

(17) Chapter 404, Subchapter A of this title (relating to Client Abuse and Neglect in TDMHMR Facilities);

(18) Chapter 404, Subchapter B of this title (relating to Client Abuse in Community Mental Health and Mental Retardation Centers);

(19) Chapter 404, Subchapter C of this title (relating to Patient Abuse in Private Psychiatric Hospitals);

(20) Chapter 404, Subchapter D of this title (relating to Client Abuse and Neglect in Registered Boarding Homes);

(21) Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services); and

(22) Chapter 407 of this title (relating to Standard Operating Procedures).

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 September 22, 1989.

TRD-8909248

Patilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: October 24, 1989

Proposal publication date: June 23, 1989

For further information, please call: (512) 465-4670

◆ ◆ ◆
**Subchapter J. Licensure of
Private Psychiatric Hospitals**
• 25 TAC §§401.585, 401.588-
401.589

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§401.585, 401.588, and 401.589, without changes to the proposed text as published in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3387).

The amendments are updated consistent with current requirements and regulations.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 September 22, 1989.

TRD-8909248

Patilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: October 24, 1989

Proposal publication date: September 14, 1989

For further information, please call: (512) 465-4670.

◆ ◆ ◆
**Chapter 403. Other Agencies
and the Public**

**Subchapter C. Determination
of Rates for Support,
Maintenance, and Treatment**
• 25 TAC §403.74

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §403.74, without changes to the proposed text as published in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3388).

The amendment enacts the provisions of House Bill 264 of the 71st Texas Legislature, which amends Texas Civil Statutes, Article

3196a, to provide that certain trusts established for persons with mental illness are exempted from assets on which charges for support, maintenance, or treatment in a TDMHMR facility are based. The title of the subchapter has been amended to delete the term "of clients" consistent with revised TDMHMR terminology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 September 22, 1989.

TRD-8909247

Pattlou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: October 24, 1989

Proposal publication date: July 14, 1989

For further information, please call: (512) 465-4670.

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State Board of Insurance Exempt Filing

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

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.)

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has adopted a filing submitted by the Texas Racing Commission of a Pari-Mutuel Racetrack Surety Bond.

In accordance with the provisions of Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the Office of Chief Clerk of the State Board of Insurance since September 19, 1989.

The Pari-Mutuel Racetrack Surety Bond has been developed to comply with provisions of the Texas Racing Act, (Texas Civil Statutes, Article 179e), and the rules adopted by the Texas Racing Commission. The Act, §6.04, the Commission's Rules of Racing, §305.10, require that an applicant for a license to conduct race meetings, at which pari-mutuel wagering will occur, must file a surety bond with the commission. The penal amount of the bond is \$100,000 payable to the state and is conditioned on the licensee's faithful compliance with the requirements and duties of the Act and the rules of the commission.

The State Board of Insurance has adopted a rate of \$10 per M per Annum for this bond. The Classification Code is 475.

Under the Insurance Code, Article 5.97(j), the board finds that the interest of the public welfare in the proper functioning of administrative regulation of pari-mutuel racetrack operators, in compliance with the Texas Racing Act, has created a clear and compelling necessity that requires this bond form and rate to be effective immediately upon filing of notification of the board's action in the Office of the Secretary of State and thereafter for 120 days.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 October 3, 1989.

TRD-8909262

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: October 3, 1989

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

The State Board of Insurance has approved, as part of the Texas General Basis Schedules, the 1989 Edition of the National Fire Protection Association's Standards for the Installation of Sprinkler Systems which sets forth acceptable installation of automatic sprinkler systems for the purposes of allowing credit in the published fire rates of individual buildings utilized for various types of occupancy. In addition, the State Board of Insurance has approved a revision to the State Board of Insurance's Supplemental Sprinkler Rules which set forth specific exceptions to the National Fire Protection Association guidelines for the installation of sprinkler systems. The exceptions produce changes to the standards set out by the National Fire Protection Association and are used in instances where the NFPA standards do not follow particular engineering criteria that are acceptable for the installation of automatic sprinkler systems in Texas.

Automatic sprinkler system installed in risks located in the state of Texas for recognition of a credit in the fire rate as promulgated by the State Board of Insurance are subject to the installation standards and requirements set forth in the publication outlined above, including the State Board of Insurance Supplemental Rules for Sprinkler Systems. This publication is updated on a periodic basis to incorporate the latest technology for the installation of automatic sprinkler systems as an effective means of fire protection. The board recognized the need to maintain current standards for the installation of fire protection systems to insure the availability of proper fire rate credits to those risks adequately protected by automatic sprinkler systems.

These changes are to be effective November 1, 1989.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 October 2, 1989.

TRD-8908264

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 1, 1989

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

The State Board of Insurance has adopted amendments to the Texas Automobile Manual.

The board has adopted physical damage rating symbols for certain 1990 model private passenger automobiles and adjusted 1989 and 1988 model private passenger automobiles. The symbols adopted were developed from manufacturers list price data and adjusted in accordance with the prescribed vehicle series rating rule contained in the Symbol and Identification Section of the Texas Automobile Manual for 1990 models and subsequent models and 1982 to 1989 model private passenger automobiles. The amendments are to be effective on the 60th day after notice of this action is published in the adopted rule section of the Texas Register.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 October 3, 1989.

TRD-8909263

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 9, 1989

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

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 Board of Architectural Examiners

Saturday, October 14, 1989, 8 a.m. The Rules Committee of the Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the review of landscape architect and architect statutes; review of landscape architect and architect rules and regulations.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758. (512) 458-1363.

Filed: October 4, 1989, 1:59 p.m.

TRD-8909345

Battleship Texas Advisory Board

Thursday, October 12, 1989, 4 p.m. The Battleship Texas Advisory Board will meet in the 32 Floor Conference Room, Offices of Liddell, Sapp, Zively, Hill and LaBoon, 3200 Texas Commerce Tower, 600 Travis, Houston. According to the agenda summary, the board will consider various items with respect to the Battleship Texas restoration project and fund raising activities in connection therewith.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: October 4, 1989, 8:55 a.m.

TRD-8909285

Texas Bond Review Board

Friday, October 6, 1989, 10 a.m. The Texas Bond Review Board met for an emergency meeting in the Sergeant's Committee Room, State Capitol, Austin. According to the agenda, the board considered the proposed issue: Texas Veterans' Land Board-Veterans' Land Refunding Bonds, Series 1989; and other business. The emergency status was necessary to ensure adequate time for the board to market the re-

funding bonds.

Contact: Tom K. Pollard, Room 506, Sam Houston Building, Austin, Texas, (512) 463-1741.

Filed: October 3, 1989, 2:37 p.m.

TRD-8909239

Friday, October 13, 1989, 10 a.m. The Staff Planning Meeting of the Texas Bond Review Board will meet in the Sergeant's Committee Room, Capitol, Austin. According to the agenda, the minutes will be approved; consider proposed issue of Texas Water Development Bonds, taxable series 1989C; and other business: Texas Department of Corrections redirection of bond proceeds.

Contact: Tom K. Pollard, Room 506, Sam Houston Building, Austin, Texas, (512) 463-1741.

Filed: October 4, 1989, 4:09 p.m.

TRD-8909358

Thursday, October 19, 1989, 10 a.m. The Texas Bond Review Board will meet in the Sergeant's Committee Room, Capitol, Austin. According to the agenda, the approval of minutes; consider proposed issue of Texas Water Development Bonds, taxable series 1989C; and other business: Texas department of Corrections redirection of bond proceeds.

Contact: Tom K. Pollard, Room 506, Sam Houston Building, Austin, Texas, (512) 463-1741.

Filed: October 4, 1989, 4:09 p.m.

TRD-8909359

Texas Higher Education Coordinating Board

Thursday, October 26, 1989, 9:30 a.m. The Research Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the committee will consider approval of awards for the advanced research and advanced tech-

nology programs.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:03 p.m.

TRD-8909370

Thursday, October 26, 1989, 10 a.m. The Community Colleges and Technical Institutes Committee of the Texas Higher Education Coordinating Board will meet in the Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to community colleges and technical institutes.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:03 p.m.

TRD-8909369

Thursday, October 26, 1989, 10:15 a.m. The Financial Planning Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the committee will hear a presentation of a report on Texas formula review and study process for public senior colleges, universities and public community junior colleges and technical institutes.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:04 p.m.

TRD-8909368

Thursday, October 26, 1989, 10:45 a.m. The Education Opportunity Planning Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the committee will hear a report on the Texas educational opportunity plan for public higher education and a report on youth opportunities unlimited and drop-out prevention.

Contact: Kenneth H. Ashworth, P.O. Box

12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:04 p.m.

TRD-8909367

Thursday, October 26, 1989, 11:15 a.m.
The Universities Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to universities.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:04 p.m.

TRD-8909365

Thursday, October 26, 1989, 1 p.m.
The Health Affairs Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the committee will hear a report on the establishment of the nursing study committee.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:04 p.m.

TRD-8909366

Thursday, October 26, 1989, 1:15 p.m.
The Student Services Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the committee will consider matters relating to student services.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:05 p.m.

TRD-8909364

Thursday, October 26, 1989, 1:45 p.m.
The Facilities and Campus Planning Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the committee will consider matters relating to facilities and campus planning.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:05 p.m.

TRD-8909363

Thursday, October 26, 1989, 2:30 p.m.
The Administration Committee of the Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive,

Austin. According to the agenda, the committee will consider an amendment to coordinating board operating budget for FY 1990; final adoption of coordinating board rules on conducting hearings; and consider approval of commissioner's appointment of a internal auditor.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:06 p.m.

TRD-8909362

Friday, October 27, 1989, 9 a.m.
The Texas Higher Education Coordinating Board will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the board will consider matters relating to the committee on educational opportunity planning; committee on facilities and campus planning; committee on student services; committee on community colleges and technical institutes; committee on universities, committee on health affairs; committee on financial planning; committee on administration and committee on research.

Contact: Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 462-6400.

Filed: October 4, 1989, 4:03 p.m.

TRD-8909371

Texas Education Agency

Thursday, October 12, 1989, 3:30 p.m., and reconvene Friday, October 13, 1989, 8:30 a.m. to complete the agenda as necessary. The Committee on Long-Range Planning of 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 committee will consider the proposed amendments to 19 TAC Chapter 161, official advisory committee; SBOE advisory committee appointments; Sunset bill provisions concerning public testimony before the SBOE; summary of pilot programs conducted or authorized by the central education agency goals 1-4 of the long-range plan; issues and actions; expert session on middle schools; expert session on technology and education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: October 4, 1989, 3:04 p.m.

TRD-8909352

Advisory Commission on State Emergency Communications

Wednesday, October 11, 1989, 9 a.m.
The Public Information Committee of the Advisory Commission on State Emergency Communications will meet for an emergency meeting in Room 102, John Reagan Building, 15th and Congress, Austin. According to the agenda, the committee will recognize guests; hear update on public service announcements; update on emergency communications college curriculum project; report on implementation stage of 9-1-1 and discussion regard development of public education materials; consider new business; hear public comment. The emergency status was necessary to discuss and take action on items to be presented to full commission at its October 11, 1989, meeting.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: October 5, 1989, 8:30 a.m.

TRD-8909376

Wednesday October 11, 1989, 9:30 a.m.
The Regional Plan Committee of the Advisory Commission on State Emergency Communications will meet for an emergency meeting in Room 105, John Reagan Building, 15th and Congress, Austin. According to the agenda summary, the committee will recognize guests; review 9-1-1 regional plan; executive summaries to be presented for approval; 9-1-1 regional planning status report; update on central office modification workshop; consider new business; and hear public comment. The emergency status was necessary to discuss and take action on items to be presented to full commission at its October 11, 1989, meeting.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: October 5, 1989, 8:31 a.m.

TRD-8909375

Wednesday, October 11, 1989, 9:30 a.m.
The Finance Committee of the Advisory Commission State Emergency Communications will meet for an emergency meeting in Room G-B, John Reagan Building, 15th and Congress, Austin. According to the agenda, the committee will recognize guests; hear financial report-revenues; review financial impact of 9-1-1 regional plans on equalization surcharge fund; update on Western Union and other delinquent surcharge accounts; update on GTE-Southwest's proposed 9-1-1 tariff; discuss and consider proposed clarification of definition of terms in statute; consider any new business; and hear public comment. The emergency status was necessary to discuss and take action on items to be presented to full commission at its October 11, 1989, meeting.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: October 5, 1989, 8:31 a.m.

TRD-8909374

Wednesday, October 11, 1989, 10 a.m.
The Administration Committee of the Advisory Commission on State Emergency Communications will meet for an emergency meeting in Room G-A, John Reagan Building, 15th and Congress, Austin. According to the agenda, the committee will recognize guests; hear update on local governments addressing project; discussion on remaining 1989 planning funds; financial report; update on request for proposal (RFP) for auditing firm; discussion on work objectives for committee; consider new business; and hear public comment. The emergency status was necessary to discuss action on items to be presented to full commission at its October 11, 1989, meeting.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: October 5, 1989, 8:31 a.m.

TRD-89092374

Wednesday, October 11, 1989, 11 a.m.
The ACSEC Commission of the Advisory Commission on State Emergency Communications will meet for an emergency meeting in Room 105, John H. Reagan Building, Austin. According to the agenda summary, the commission will recognize guests; hear committee reports from: public information, administration, finance, and regional plan; hear public comment; consider any new business; and consider approval of September meeting minutes. The emergency status was necessary to take action on 911-regional plan approval.

Contact: Joe Kirk, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: October 4, 1989, 4:56 p.m.

TRD-8909372

Texas Department of Health

Friday, October 13, 1989, 1:30 p.m. The On-Site Wastewater Treatment Research Council of the Texas Department of Health will meet at the Center for Environmental Research, Hornsby Bend Wastewater and Treatment Facility, 2210 West FM 973, Austin. According to the agenda summary, the council will approve minutes of previous meeting; hear TDH staff reports; consider TWC repropoed wastewater reuse rules; proposal to Texas Water Development Board for demonstration project in South Texas; task outline for on-site wastewater treatment research; budgetary and operating procedures for council, TDH, and center for environmental research.

Contact: Stephen Tencza, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7293.

Thursday, October 19, 1989, 10 a.m. The Advisory Committee on Nursing Home Affairs of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of previous meeting; consider universal precautions rules; social services; swing-bed program; paperwork reduction; betterment of nursing home care; voluntary certification of alzheimer's units; medicaid moratorium on nursing home beds; administrative penalties revisions (House Bill 791); proposed rules on unannounced inspections, open hearings, reporting resident death information (Senate Bill 487); medical directors in nursing homes.

Contact: Richard Butler, 100 West 49th Street, Austin, Texas 78756, (512) 458-7709.

Filed: October 4, 1989, 4:10 p.m.

TRD-8909360

Texas Historical Commission

Friday, October 27, 1989, 8 a.m. The Publications/Outreach Committee of the Texas Historical Commission will meet in Roseville Manor, 217 West LaFayette, Jefferson. According to the agenda, the committee will consider the T.R.Fehrenbach book award; medallion update; and public outreach.

Contact: Roni Morales, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: October 4, 1989, 10:28 a.m.

TRD-8909284

Texas Department of Human Services

Thursday, October 12, 1989, 9 a.m. The County Indigent Health Care Program Advisory Meeting of the Texas Department of Human Services will meet in the Public Hearing Room, East Tower, First Floor, 701 West 51st Street, Austin. According to the agenda, the committee will draw for terms; select committee chair and vice-chair; hear process for claiming committee-related expenses; indigent care overview; proposed policy and forms revisions; indigent care biennial survey; current policy issues; CHCP growth trends; review of 70th and 71st legislative sessions; committee issue identification/study requests; closing comments.

Contact: Carol Peters, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3711.

Filed: October 4, 1989, 12:56 p.m.

TRD-8909343

Thursday, October 12, 1989, 10:30 a.m. The Post-Adoption Services Advisory Com-

mittee Meeting of the Texas Department of Human Services will meet in the Conference Room 4W, West Tower, 4th Floor, 710 West 51st Street, Austin. According to the agenda, the committee will review House Bill 1806; bylaws/committee guidelines; policy material for post-adoption services.

Contact: Kathleen Hamilton, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3365.

Filed: October 4, 1989, 12:55 p.m.

TRD-8909342

State Board of Insurance

Wednesday, October 25, 1989, 9:30 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will consider adoption of 28 TAC §§8.1-8.3 (14 TexReg 2650).

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: October 4, 1989, 11:19 a.m.

TRD-8909291

Texas Board of Professional Land Surveying

Friday, October 13, 1989, 2 p.m. The Second Called Meeting of the Texas Board of Professional Land Surveying will meet in the Westin Paso Del Norte, 101 South El Paso Street, El Paso. According to the agenda, the board will approve minutes of previous meeting; finalize October, 1989, examinations; discuss correspondence; hear committee reports; any other business to come before the board; board will attend the TSPS annual short course.

Contact: Betty J. Pope, 7701 North Lamar, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: October 3, 1989, 2:06 p.m.

TRD-8909240

Texas Department of Licensing and Regulation

Wednesday October 18, 1989, 10 a.m. The Industrialized Housing and Buildings Department of the Texas Department of Licensing and Regulation will meet in Room 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the department will review minutes of last meeting; department update; old business: limiting factors on the placement of the nonsite specific buildings, hand-capped requirements, fire rated walls, wind load, live load; data plate modification,

drawing/blueprint modification, decal modification; new business: review of proposed reciprocity rule, code interpretations, handicapped accessibility, water heater pressure relief drain, floor insulation, structural design guide for hardwood plywood; third party performance review; and approval of third parties.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: October 4, 1989, 2:13 p.m.

TRD-8909346

Texas State Board of Medical Examiners

Tuesday, October 10, 1989, 9:15 a.m. The Executive Committee of the Texas State Board of Medical Examiners will meet for an emergency meeting at 1101 Camino LaCosta, Austin. According to the revised agenda summary, the meeting was rescheduled from October 4, 1989, 8:30 a.m.; discuss personnel matters in executive session under authority of Article 6252-17, §2(g), as related to Articles 4495b, 2.07, 3.06(d), 4.05(d), 55.06(e)(1) and Opinions of the Attorney General 1974, No. H-484. The emergency status was necessary to obtain additional information which should be brought to the attention of the committee.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: October 4, 1989, 2010:29 a.m.

TRD-8909281

Texas Optometry Board

Thursday, October 12, 1989, 8:30 a.m. The Texas Optometry Board will meet in the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the board will consider reports of the secretary-treasurer, legal counsel, executive director, committee chairpersons; unfinished business to consider Attorney General Opinion JM-1081 (Req. 1667); adoption of proposed rule 271.6 (National Board Exams); FTC eyeglass Rule II; consider new business of duplicate license requests, cancellation of new licenses for non-payment of fee; A.G. conference on administrative law and liability; executive session in compliance with Article 6252-17, §2(e), contemplated or pending litigation, matters referred or to be referred to the attorney general; October 11, 1989, committees will meet according to following schedule: 2 p.m.—investigation/enforcement informal conferences; 4:30 p.m.—rules committee; and 7:30 p.m., all committees will meet.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-

1938.

Filed: October 3, 1989, 12:52 p.m.

TRD-8909234

Texas State Board of Public Accountancy

Thursday, October 12, 1989, 9 a.m. The Behavioral Enforcement Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will approve August and September status reports; recommendations regarding specific complaints: licensees complaint numbers 89-06-12L, 89-07-03L, 89-05-10L; discuss possible Section 8 violations, Aguilar, Armstrong, Bedford; complaint no. 88-04-17L; Brandt, Eichner, Flynn, Fox, complaint nos. 89-02-15L, 89-02-16L, 89-02-17L, 89-02-18N; Henderson, Hetherington, McBride, Maddox, Miley, Paul, Roberts, Ruby, Shah, Solt, Stafford, Taylor, Yearly; review of backlog of complaints; rules of professional conduct exam evaluation; discuss individual questions 1-30, and complete evaluation forms; rules exam on dismissal; discuss requiring a respondent to take and pass a rules examination in cases where the committee grants a dismissal with an admonishment.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 4, 1989, 10:28 a.m.

TRD-8909282

Thursday, October 12, 1989, 2 p.m. The Examination Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee will review information relating to the November, 1989, examination; consider nonroutine applications; ratify applications; review board and staff assignments; review or proctor availability; candidate site statistics; review announcement to be made at each site; discuss academic and proprietary CPA review courses; discuss residency requirements for non-US citizens; correspondence; and other.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 4, 1989, 11:16 a.m.

TRD-8909290

Public Utility Commission of Texas

Monday, October 9, 1989, 4:15 p.m. The Administrative Division of the Public Utility Commission of Texas met for an emergency meeting in Suite 450N ("CHR"), 7800 Shoal Creek Boulevard, Austin. Ac-

cording to the revised agenda, the commission will consider project No. 7987 (proposed reply comments in FCC rulemaking to amend Part 69 to create access charge subelements for open network architecture (ONA) (CC Docket No. 89-79)). The emergency status was necessary to meet FCC deadline

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

Filed: October 3, 1989, 3:20 p.m.

TRD-8909336

Friday, October 13, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the rescheduled hearing from October 5, 1989, 10 a.m. on Docket No. 9043—application of Southwestern Bell Telephone Company for extended area service tariff revision.

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

Filed: October 3, 1989, 3:19 p.m.

TRD-8909337

Thursday, October 19, 1989, 3 p.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference on Docket No. 9034—application of Southwestern Bell Telephone Company to revise rates and tariffs for Microlink II.

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

Filed: October 3, 1989, 3:19 p.m.

TRD-8909338

Monday, October 23, 1989, 11 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the open meeting on Docket No. 8833—application of Jackson Electric Cooperative, Inc. for a new off-peak service offering.

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

Filed: October 3, 1989, 3:08 p.m.

TRD-8909340

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 8946—appeal of Gulf States Utilities Company from rate proceedings of the city of Patton Village.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas

78757, (512) 458-0100.

Filed: October 3, 1989, 3:22 p.m.

TRD-8909289

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 8948—appeal of Gulf States Utilities Company from rate proceeding of the City of Groves.

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

Filed: October 3, 1989, 3:20 p.m.

TRD-8909335

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 8939—appeal of Gulf states Utilities company from rate proceeding of the City of Cut and Shoot.

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

Filed: October 3, 1989, 3:23 p.m.

TRD-8909288

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 8922—appeal of Gulf States Utilities Company from rate proceeding of the City of Conroe.

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

Filed: October 3, 1989, 3:23 p.m.

TRD-8909287

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 8702—application of Gulf States Utilities Company for authority to change rates.

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

Filed: October 3, 1989, 3:23 p.m.

TRD-8909286

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing (Phase II) on Docket No. 8949—appeal of Gulf States Utilities Company from rate proceed-

ing of the City of Nederland.

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

Filed: October 3, 1989, 3:21 p.m.

TRD-8909297

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing (Phase II) on Docket No. 8947—appeal of Gulf States Utilities Company from rate proceeding of the City of Silsbee.

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

Filed: October 3, 1989, 3:21 p.m.

TRD-8909206

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing (Phase II) on Docket No. 8945—appeal of Gulf States Utilities Company from rate proceeding of the City of Woodville.

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

Filed: October 3, 1989, 3:21 p.m.

TRD-8909295

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing (Phase II) on Docket No. 8944—appeal of Gulf States Utilities Company from rate proceeding of the City of West Orange.

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

Filed: October 3, 1989, 3:22 p.m.

TRD-8909294

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing (Phase II) on Docket No. 8233—application of Sam Rayburn G&T Electric Cooperative, Inc. for sale, transfer or merger.

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

Filed: October 3, 1989, 3:22 p.m.

TRD-8909293

Thursday, October 26, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin.

According to the agenda, the hearing (Phase II) on Docket No. 8940—appeal of Gulf States Utilities Company from rate proceeding of the City of Orange.

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

Filed: October 3, 1989, 3:22 p.m.

TRD-8909292

Friday, December 15, 1989, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing rescheduled from December 12, 1989, 10 a.m., on Docket No. 8672—application of Southwestern Bell Telephone Company to provide plexar (s) custom service to specific customers.

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

Filed: October 4, 1989, 3:26 p.m.

TRD-8909353

Monday, December 18, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite store 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on Docket No. 9034—application of Southwestern Bell Telephone Company to revise rates and tariffs for Microlink II.

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

Filed: October 3, 1989, 3:19 p.m.

TRD-8909339

Texas Real Estate Commission

Friday, October 6, 1989, 9:30 a.m. The Texas Real Estate Commission met for an emergency meeting in the Board Room, College State Hilton Hotel, 801 University Drive, College Station. According to the revised agenda summary, the commission convened an executive session to discuss appointment of public officials pursuant to Texas Civil Statutes, Article 6252-17, §2(g); considered an appointment to Texas Real Estate Appraiser Certification Committee. The emergency status was necessary because the meeting scheduled for October 6, 1989 could not be rescheduled and additional agenda items required action prior to the next scheduled meeting.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, -2188, (512) 465-3900.

Filed: October 3, 1989, 4:14 p.m.

TRD-8909249

State Securities Board

Friday, October 13, 1989, 9:30 a.m. The State Securities Board will meet in the ERS Auditorium, 1800 San Jacinto, Austin. According to the agenda summary, the board will approve minutes of July 25, 1989, meeting; consider new rule proposal to amend §131.2; published proposals to amend §§105.8, 107.2; repeal §109.6; amend §§109.7, 109.13, 109.14, 111.2; repeal §111.4, amend §§115.1, 115.3, 115.4, 133.15, 133.19, 133.20, 133.24, 117, 133.31; create new §133.33; and repeal 139.11; new business items for subsequent board meetings; general update with reports from division directors and commissioner.

Contact: Richard D. Latham, 1800 San Jacinto Street, Austin, Texas, (512) 474-2233.

Filed: October 4, 1989, 2:35 p.m.

TRD-8909347

The Texas A&M University System, Board of Regents

Friday, October 6, 1989, 10:30 a.m. and Saturday, October 7, 1989, 8:15 a.m. The Committee for Service Units of the Texas A&M University System, Board of Regents met for an emergency meeting at the Vernon Research and Extension Center, Vernon. According to the agenda, the committee will tour the research facilities at Vernon, Amarillo (diagnostic vet lab) and Halfway. The emergency status was necessary because the Texas State Statutes require regents to inspect facilities and the precise scheduling of the timing of the visit was unforeseeable prior to the date of posting.

Contact: Vickie Burt, College Station, Texas, (409) 845-9604.

Filed: October 4, 1989, 12:50 p.m.

TRD-8909341

Texas Water Commission

Thursday, October 5, 1989, 10 a.m. The Texas Water Commission met for an emergency meeting in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the consideration of 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 particular action at a future date or time. The emergency status was necessary because a personnel matter had arisen which required immediate action by the commissioners.

Contact: Beverly De La Zerda, P.O. Box

13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 3, 1989, 10:49 a.m.

TRD-8909230

Tuesday, October 17, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the consideration of 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 particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 3, 1989, 10:50 a.m.

TRD-8909229

Tuesday, October 17, 1989, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the consideration of 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 particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 4, 1989, 10:44 a.m.

TRD-8909283

Thursday, October 19, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress, Austin. According to the agenda summary, the consideration of 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 particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 3, 1989, 10:40 a.m.

TRD-8909232

Friday, October 20, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8090-R- rate increase of Sunbelt Utilities.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:33 p.m.

TRD-8909251

Monday, October 23, 1989 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8117-D-request for a cease and desist or other order by Rockett Water Supply Corporation against the City of Waxahachie.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:33 p.m.

TRD-8909252

Thursday, October 26, 1989, 1:30 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the groundwater protection committee will meet to discuss what actions are necessary for the commission to implement the requirements of House Bill 1458, 1989, 71st Legislature, Regular Session, including the development of a plan for the protection and enhancement of water quality pursuant to federal statute, regulation, or policy, including management plans for the prevention of water pollution by agricultural chemical and agents.

Contact: Bruce Fink, P.O. Box 13087, Austin, Texas 78711.

Filed: October 4, 1989, 8:39 a.m.

TRD-8909267

Tuesday, October 31, 1989, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the hearing on conversion of Rockett Water Supply Corporation to a special utility district and transfer Certificate of Convenience and Necessity No. 10099.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-78898.

Filed: October 3, 1989, 4:40 p.m.

TRD-8909261

Tuesday, October 31, 1989, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the consideration of 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 particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: October 3, 1989, 10:49 a.m.

TRD-8909231

Friday, November 3, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8122-G—rate increase of Trent Water Works.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 199, 4:32 p.m.

TRD-8909255

Monday, November 6, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8092-G—rate increase of River Oaks Ranch Development Corporation.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:32 p.m.

TRD-8909256

Monday, November 6, 1989, 10:30 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8106-C—application for a certificate of convenience and necessity by L. W. Dollar, Walter Rogers and John Johnston doing business as Lakeview Water System.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:31 p.m.

TRD-8909257

Friday, November 10, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8161-W—rate increase of Town of Woodloch.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:31 p.m.

TRD-8909258

Monday, November 13, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8118-X—appeal by Tommy Patterson protesting East Crawford Water Supply Corporation's charges for a new connection.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:32 p.m.

TRD-8909254

Monday, November 13, 1989, 10:30 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8068-C—application for amendment to water certificate of convenience and necessity by Military Highway Water Supply Corporation (CNN 10551).

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:32 p.m.

TRD-8909253

Friday, November 17, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 1149B, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8009-W—rate increase of Johnson County Fresh Water Supply District No. 1.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:31 p.m.

TRD-8909259

Friday, November 17, 1989, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the hearing on Docket No. 8051-R—application of a rate increase of Kerrville South Water Company.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 3, 1989, 4:30 p.m.

TRD-8909260

Tuesday, November 28, 1989, 10 a.m. The Texas water Commission will meet in Room 118, Stephen F. Austin State Office Building, 1700 North Congress, Austin. According to the agenda summary, the notice of application by Angelina and Neches River Authority for a second extension of time to commence and complete construction of a dam and reservoir (Lake Eastex) on Mud Creek, tributary of Angelina River, tributary of the Neches River, Neches River Basin in Cherokee County, Texas, autho-

rized by Permit No. 4228 (A 4537).

Contact: Terry Slade, P.O. Box 13087, Austin, Texas 78711, (512) 371-6300.

Filed: October 4, 1989, 3:09 p.m.

TRD-8909351

Tuesday, November 28, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin State Office Building, 1700 North Congress, Austin. According to the agenda summary, the notice of application by City of San Angelo for a second extension of time to commence construction of a dam and reservoir authorized under Permit No. 4244 (A-4541) from September 16, 1989, to September 16, 1995, and to extend the date of completion from September 16, 1990, to September 16, 1996, in the Concho River, Colorado River Basin, approximately 4 miles southeast of San Angelo, Tom Green County, Texas.

Contact: Weldon Hawthorne, P.O. Box 13087, Austin, Texas 78711, (512) 371-6300.

Filed: October 4, 1989, 3:09 p.m.

TRD-8909350

Tuesday, December 12, 1989, 10 a.m. The Texas water Commission will meet in Room 118, Stephen F. Austin State Office Building, 1700 North Congress, Austin. According to the agenda summary, the notice of application by John William Helton, Jr. and wife, Francis Joanne Helton, application No. 19-2164A, to amend certificate of adjudication No. 19-2164 as follows: increase the annual diversion from 23 to 81.6 acre-feet of water per annum; increase the acreage to be irrigated from 23 to 81.6 acres of land, and add a diversion point on the San Antonio River on the left, or north, bank from the southwest corner.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 371-6300.

Filed: October 4, 1989, 3:10 p.m.

TRD-8909349

Regional Meetings

Meetings Filed October 4, 1989

The Tax Appraisal District of Bell County, Board of Directors will meet in the District Office, 411 East Central, Belton, October 18, 1989, at 7 p. m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29.

The Bexar-Medina-Atascosa Counties Water Control 7 Improvement District No. 1, Board of Directors met in the District Office, Highway 81, Natalia, October 9, 1989 at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059 (512) 663-2132.

The Blanco County Appraisal District, Board of Directors will meet in the Blanco County Courthouse Annex, Johnson City, October 10, 1989, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Brazos Valley Development Council, Executive Committee will meet in the Council Offices, 3006 East 29th Street, Bryan, October 12, 1989, at 1:30 p.m. Information may be obtained from Glenn J. Cook, 3006 East 29th Street, Bryan, Texas (409) 776-2277.

The Cass County Appraisal District, Board of Directors met in the District Office, 400 North Main Street, Linden, October 9, 1989, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Lavaca County Central Appraisal District, Appraisal Review Board will meet in the District Office, 113 North Main, Hallettsville, October 11, 1989, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Nolan County Central Appraisal District, Board of Directors will meet in Suite 317A, Nolan County Courthouse,

Sweetwater, October 10, 1989, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Nueces-Jim Wells-Kleberg-Kenedy SWCD, Board of Directors will meet at 710 East Main Street, Robstown, October 17, 1989, at 2 p.m. Information may be obtained from Joan D. Rumfield, 710 East Main Street, Robstown, Texas 78380.

The Trinity River Authority of Texas, Executive Committee met at 5300 South Collins, Arlington, October 9, 1989, at 10:30 a.m. Information may be obtained from Jack C. Worsham, 5300 South Collins, P.O. Box 60, Arlington, Texas, 76004.

The Upshur County Appraisal District, Board of Directors met in the District Office, Warren and Trinity Street, Gilmer, October 9, 1989, 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The West Central Texas Council of Governments, West Central Texas Private Industry Council will meet in the Quality Inn, 505 Pine, Abilene, October 10, 1989, at 10 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-8909250

Meetings Filed October 5, 1989

The Region IV Education Service Center, Board of Directors will meet in the Directors Room, Conference Hall, Columbia Lakes Conference Center in Brazoria County, October 10, 1989, at 10:30 a.m. Information may be obtained from William L. McKinney, 7145 West Tidwell, Houston, Texas 77001, (713) 462-7708.

The San Patricio County Appraisal District, Board of Directors will meet at 1146 East Market, Sinton, October 12, 1989, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The South Plains Association of Governments, Executive Committee will meet at 1323 58th Street, Lubbock, October 10, 1989, at 9 a.m. Information may be obtained from Jerry D. Castevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452.

The South Plains Association of Governments, Board of Directors will meet at 1323 58th Street, Lubbock, October 10, 1989, at 10 a.m. Information may be obtained from Jerry D. Castevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452.

TRD-8909373

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 Department of Banking Notices of Applications

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a 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 September 29, 1989, the banking commissioner received an application to acquire control of Heights Bank, Harker Heights, by Mike Helm of Harker Heights, and Paula Lohse of Killeen.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909180 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: October 2, 1989

For further information, please call: (512) 479-1200

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a 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 September 29, 1989, the banking commissioner received an application to acquire control of United Peoples Bank, Lampasas, by Mike Helm of Harker Heights, and Paula Lohse of Killeen.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909179 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: October 2, 1989

For further information, please call: (512) 479-1200

Notice of Postponement

The October 5, 1989, hearing on an application to withdraw excess earnings from trust deposits filed by Corley Funeral Home, Corsicana, has been postponed and will be rescheduled at a later date.

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 October 2, 1989.

TRD-8909186 Ann Graham
General Counsel
Texas Department of Banking

Filed: October 2, 1989

For further information, please call: (512) 479-1200

Texas Commission for the Blind Request for Proposals

Pat D. Westbrook, Executive Director of the Texas Commission for the Blind, has announced the availability of Title VII, Part A funds to contract for independent living skills training for legally and totally blind individuals.

Funding Areas. Applications will be considered for facilities eligible under 34 Federal Regulations, §361.63 for independent living skills training.

Objectives. The primary objective of the Independent Living Rehabilitation Program is to enable legally and totally blind persons without vocational potential to live independently with their families and/or in their communities and to avoid institutionalization. This is achieved via the provision of independent living skills training, adaptive aids and assistance in obtaining physical restoration. The Commission for the Blind intends to enter into contracts with facilities to provide various independent living skills training programs on a fee for services basis to clients determined eligible by the commission. Funds available for this purpose will range from \$20,000 to \$25,000.

Examples of training include: peer counseling groups; recreation groups; braille instruction groups; and other individual or group training which will benefit blind persons with a wide range of disabilities in terms of independence.

Targeted Population. Individuals served under these contracts are persons who are legally or totally blind and who have met the basic requirements for receiving ILR Services which are: a presence of a severe physical or mental disability, which, for the purposes of this contract, is or includes legal or total blindness; the presence of a severe limitation in ability to function independently in the family or the community or to engage in work, continue employment; and a reasonable expectation that independent living rehabilitation services will significantly assist the individual to increase his/her ability to function independently in the family or community or to engage or continue in employment.

All clients served under these contracts must be determined to be eligible by the local Texas Commission for the Blind committee.

Who is Eligible to Apply. Local public agencies and private non-profit organizations who provide independent

living skills training are eligible to apply for contracts. The Federal Regulations, §365.12, states: any agency, organization or facility awarded a grant by the state unit must assure that severely handicapped individuals are fully involved in policy and program development activities affecting the provision of independent living rehabilitation services. Contracts will be awarded only in those cities or regions where the commission presently has an ILR caseload. The cities or regions are as follows: Houston, Corpus Christi, Tyler, Harlingen, San Antonio, and Odessa.

Application Procedures. Submit to Mr. Robert Packard, Director of Special Services, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas, 78711; a narrative no longer than five typed pages which describes your organization; individuals you now serve; the quality and extent of services to be provided; how proposed services would augment those presently available; and cost per person per hour for proposed training. Also include qualifications of key personnel; a letter from the executive director or chairman of the board of your organization supporting your request and your proposed plan; you may, as an appendix, supply additional information about your organization and past achievements in serving the disabled in general and the blind in particular.

All Applications Must be Postmarked no Later Than November 10, 1989.

Interested parties are urged to contact Texas Commission for the Blind with related questions prior to drafting proposals to facilitate the Request for Proposals process. For additional information contact Mr. Robert Packard, Director of Special Services, Texas Commission for the Blind, at (512) 459-2589 or (512) 459-2587 (TDD).

Method of Payment. Facility will be reimbursed monthly via monthly submission of voucher with detail listing of services provided; TCB review and approval of submitted material.

Non-Duplication of Services. Fees for services will not be paid to reimburse services provided by staff currently funded through existing grants.

Review Criteria. The criteria used by reviewers to evaluate proposals are as follows: the proposal addresses the explicit purpose of the RFP and has specific, measurable goals; the applicant provides evidence of their professional and organizational familiarity and expertise with the RFP subject matter and their capacity to achieve the objectives of the contract in a timely manner; the facility states that they are free of architectural and communication barriers; the facility agrees to provide services to clients in locations accessible to clients, including residences, if required; the facility's services provide alternatives to institutionalization; and the applicant indicates that individuals with severe handicaps are involved in policy and program development decisions.

Issued in Austin, Texas, on October 2, 1989.

TRD-8809184 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: October 2, 1989

For further information, please call: (512) 459-2801

State Department of Highways and Public Transportation

Notice of Meetings

The State Department of Highways and Public Transportation (SDHPT) is holding a series of meetings to receive public input about the proposed Texas Highway Trunk System. The trunk system is part of a long-range plan to develop a rural network of four-lane or better divided roadways. This system will link urban areas in the state, as well as major ports and points of entry from surrounding states and Mexico.

The citizens of Texas have demonstrated an active and concerned interest in transportation. Their input at this time would be greatly appreciated as the department initiates planning for this very important system of roadways. In order to give the maximum opportunity to all concerned parties, it is requested that groups or organizations respectively offer their comments through one representative.

The September 26, 1989, issue of the *Texas Register* published a notice of meetings (14 TexReg 5084) for eight meetings to be held in different cities statewide. Since that time, two more meetings have been added, therefore this corrected notice is being published.

Ten meetings will be held during October and November. Registration begins at 8 a.m., and testimony will be heard from 8:30 a.m. until 12 noon at each meeting. Detailed maps and other information about the proposed system will be on display at the meetings. Staff planners from the highway department will make a brief presentation and will be available to answer questions and hear public comments. The meeting dates are as follows: Tuesday, October 3, 1989, Westin Paso del Norte (915) 534-3000, 101 South El Paso Street, El Paso; Thursday, October 5, 1989, Harvey House (806) 358-6161, 3100 West I-40, Amarillo; Tuesday, October 10, 1989, Rodeway Inn (187) 640-7080, Highway 360 at Six Flags Drive, Arlington; Thursday, October 12, 1989, Ramada Inn Astrodomo (713) 790-1900, 8111 Kirby Drive, Houston; Friday, October 27, 1989, Wyndham Corpus Christi Hotel (512) 887-1600, 900 North Shoreline Boulevard, Corpus Christi; Tuesday, October 31, 1989, Holiday Inn (915) 658-2828, 441 Rio Concho Drive, San Angelo; Thursday, November 2, 1989, Holiday Inn Airport (512) 349-9900, 77 N.E. Loop 410, San Antonio; Wednesday, November 8, 1989, Academy Auditorium, Camp Mabry, 2200 West 35th Street (512) 465-7466, Austin; Tuesday, November 14, 1989, Embassy Suites Hotel (512) 686-3000, 1800 South Second Street, McAllen; and Thursday, November 16, 1989, Best Western (214) 753-0350, 605 IH-20 Access Road, Longview.

For Further information on the proposed Texas Highway Trunk System, or for answers to specific questions, please contact Robert Cuellar, Transportation Planning Division, SDHPT, 11th and Brazos Streets, Austin, Texas 78701, (512) 465-7466.

Issued in Austin, Texas, on October 2, 1989.

TRD-8809180 Diane L. Northern
Administrative Procedures Technician
State Department of Highways and Public Transportation

Filed: October 2, 1989

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

Texas Department of Human Services Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is requesting proposals for consultant/computer programming services.

Description: The services requested consist of modification to and maintenance of existing programs that operate on a IBM PC AT compatible token ring LAN.

Selection Criteria: This is a continuation of an existing contract. Unless a better proposal is received, the contract will be awarded to the present contractor, Austin Data Management, P. O. Box 4358, Austin, Texas 78765.

Contact Person: Prospective bidders may contact Michael O. Doughty, Director, Social Work Certification, Texas Department of Human Services (MC 550-W), P. O. Box 149030, Austin, Texas 78714-9030, (512) 450-3255.

Closing Date: All bids must be received by TDHS no later than 5 p. m. on October 31, 1989.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909271 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

Public Notices

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration (HCFA) to amend the Title XIX Medical Assistance Plan by Transmittal Number 89-2, Amendment Number 222. The amendment reflects a change to the reimbursement methodology for primary home care services to determine the rate recommendation based on the weighted median of projected cost plus 4.4%. If additional information is needed, contact Ernest McKenney, (512) 450-3165.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909272 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration (HCFA) to amend the Title XIX Medical Assistance Plan by Transmittal Number 89-4, Amendment Number 224. The amendment eliminates the limitation on physician inpatient hospital visits. If additional information is needed, contact Joe Branton, (512) 338-6505.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909273 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration (HCFA) to amend the Title XIX Medical Assistance Plan by Transmittal Number 89-5, Amendment Number 225. The amendment, required by HCFA, consists of preprints which add the Qualified Medicare Beneficiary provisions made mandatory under the Medicare Catastrophic Coverage Act of 1988. If additional information is needed, contact Kathy E. Hall, (512) 450-3702.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909274 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration (HCFA) to amend the Title XIX Medical Assistance Plan by Transmittal Number 89-18, Amendment Number 238. The amendment provides coverage for medically necessary influenza and pneumonia immunizations. If additional information is needed, contact Penny Kendall, (512) 338-6521.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909276 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration (HCFA) to amend the Title XIX Medical Assistance Plan by Transmittal Number 89-6, Amendment Number 226. The amendment, required by HCFA, is a preprint which adds the preadmission screening and resident review (PASARR), and nurse aide training and competency evaluation requirements under OBRA 1987. If additional information is needed, contact Marc Gold, (512) 450-3174.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909275 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: October 4, 1989.

For further information, please call: (512) 450-3785

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for incorporation to do business in Texas of Management Underwriters Corporation, a domestic third party administrator. The home office is in Bedford.
2. Application for incorporation to do business in Texas of Accordia Collegiate Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis.

Indiana.

3. Application for incorporation to do business in Texas of Acordia Personal Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis, Indiana.

4. Application for incorporation to do business in Texas of Acordia Financial Industry Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis, Indiana.

5. Application for incorporation to do business in Texas of Acordia School Industry Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis, Indiana.

6. Application for incorporation to do business in Texas of Acordia Small Business Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis, Indiana.

7. Application for incorporation to do business in Texas of Acordia Senior Benefits, Inc., a foreign third party administrator. The home office is in Indianapolis, Indiana.

8. Application for incorporation to do business in Texas of Acordia Reinsurance Company, a foreign casualty insurance company. The home office is in Cincinnati, Ohio.

Issued in Austin, Texas, on October 4, 1989.

TRD-890985 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: October 4, 1989

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

Notice of Public Hearing

Notice is hereby given that a public hearing under Docket Number 1667 will be held before the State Board of Insurance beginning at 9:30 a.m. on Wednesday, October 25, 1989. The purpose of the hearing will be consideration of possible adoption of new §§8.1-8.3 to the rules of the board and such other matters as may properly be brought before the board. 28 TAC §§8.1-8.3, as proposed, concern some of the hazardous conditions which could be a basis for the commissioner of insurance to issue an order under the Insurance Code, Article 1.32 or Article 3.55-1, or to place an insurance company in a state of supervision under the Insurance Code, Article 21.28-A, or otherwise to initiate regulatory action to protect policyholders, claimants, creditors, and shareholders. Additional information, including proposed language, for 28 TAC §§8.1-8.3 was published in the June 6, 1989, issue of the *Texas Register* (14 TexReg 2650). The hearing will be in Room 414 of the State Insurance Building at 1110 San Jacinto Boulevard, in Austin.

This hearing will be held in accordance with the legal authority and jurisdiction provided in the Insurance Code, Articles 1.04, 1.32, §3; 3.55-1 and 21.28-A, §11.

The hearing and procedure will be governed by the rulemaking provisions of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and the rules of practice and procedure before the State Board of Insurance (28 TAC, Chapter 1, Subchapter A).

Please direct all inquiries regarding this hearing to Archie Clayton, Staff Attorney for Financial Regulation, Mail

Code Number 015-2, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 322-5051.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909280 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: October 4, 1989

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

Railroad Commission of Texas Notice of Hearing

The Railroad Commission of Texas will conduct a public hearing on a proposed amendment to 16 TAC §5.582, concerning deviations of up to 40% by common carriers on shipments of 501 pounds or more. The issues to be considered in the hearing include, but are not limited to: (1) whether deviations of up to 40% should be allowed; and (2) on what traffic the deviations should be allowed.

The public hearing will begin at 9 a.m., on October 26, 1989. The hearing will be held in the William B. Travis State Office Building, 1701 North Congress Avenue, Austin. Refer to the bulletin board in the first floor lobby for the room assignment. If all comments cannot be heard on October 26, the hearing will continue the following day.

The hearing will be conducted in compliance with the general and special rules of practice and procedure before the Transportation Division. Any interested member of the public may appear and offer comments. Cross-examination of witnesses will not be allowed, although the presiding examiner may ask questions of any person testifying.

Issued in Austin, Texas, on October 4, 1989.

TRD-8909279 Cril Payne
Assistant Director, Legal Division, General
Law
Railroad Commission of Texas

Filed: October 4, 1989

For further information, please call: (512) 463-7094

Texas Planning Council for Developmental Disabilities/Texas Rehabilitation Commission

Request for Proposals

The Texas Planning Council for Developmental Disabilities announces the availability of funds to be awarded by the Texas Rehabilitation Commission on its behalf for the following activities.

Incentives for supported employment. The purpose of this Request for Proposal (RFP) is to provide incentives for traditional sheltered programs to offer supported employment services. The council believes that all people with developmental disabilities deserve to have the option to work in the community alongside nondisabled people. The goal of projects funded under this title is to assist participants in obtaining competitive employment in an integrated job for an average of at least 20 hours a week with whatever supports may be necessary for the individual consumer to maintain that employment. Only individual placements will be allowed in order to facilitate optimum integration. Developmental disability (DD) funds

may not be used to provide direct consumer services such as job coaching, on-going support, or other direct services, but may be used for activities such as staff recruitment and training, program development, and job development. There must be an established plan for the long-term support of consumers who have been stabilized on the job in order to enable them to maintain employment. Existing programs are expected to redirect funds to support consumers in integrated jobs in the community as participants move from segregated to integrated settings.

Terms. Eligible applicants may be: new programs; existing programs not currently offering supported employment services; or existing programs that do have supported employment services and want to expand their services. Nonfederal match is required. Up to three-year project term. Up to \$75,000 available per project.

DD/ERS supported employment project. The purpose of this RFP is to demonstrate the use of extended rehabilitation services (ERS) funds from the Texas Rehabilitation Commission as long-term support funding to people with developmental disabilities who are not eligible for MHMR services such as those who have cerebral palsy, spina bifida, traumatic brain injury, deaf-blindness, and other severe disabilities resulting in three or more substantial functional limitations. These funds may be used for services leading up to job stabilization such as marketing, program development, job coaching not available through other Texas Rehabilitation Commission (TRC) funding, community development, assistive technology not available through other resources, staff training, and travel, supplies, and office equipment. ERS funds will be provided by TRC for on-going support of individuals who have been stabilized in employment.

Terms. Eligible applicants may be new programs or existing ERS programs. Nonfederal match is required. Up to three-year project term. Up to \$100,000 available per project.

Respite services for families with family members who have developmental disabilities and chronic health conditions. This project will provide respite services for families of individuals who have developmental disabilities and chronic health conditions and would require nurses to perform medical and/or nursing intervention as a part of their respite program. It is intended that those services be in a hospital, other community setting, or in the family home.

Terms. Nonfederal match is required. Up to three-year term. Public and private nonprofit and for profit hospitals and other community-based organizations eligible. Up to three projects, geographically dispersed across Texas.

Limitations. Agencies, except state agencies, that have a Texas Planning Council member as a member of their board of directors or an employee are not eligible to receive grant funds. The budget period for all projects will start June 1, 1990.

Bidders conference. A conference for representatives of organizations interested in submitting a proposal is scheduled for 9 a.m. to 4 p.m. on November 1, 1989, in the Public Hearing Room, Brown-Healy Building, 4900 North Lamar Boulevard, Austin.

Evaluation and selection. Proposals will be reviewed by a committee and evaluated on the basis of the content of the proposal (narrative, methodology, budget, qualifications of the applicant, and criteria included in the RFP). Grant awards will depend on available funds and final decision for funding will be made by the Texas Rehabilitation Commission on behalf of the Texas Planning Council for Developmental Disabilities.

Application process. For the application kit that contains the full request for proposals, application forms, instructions, and information, please submit a written request to: David P. Henderson, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4084.

Deadline. Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, #4141, Fourth Floor, Austin, until 5 p.m. December 5, 1989.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909184

Charles W. Schlessor
Assistant Commissioner
Texas Rehabilitation Commission

Filed: October 2, 1989

For further information, please call: (512) 483-4051.

The University of Texas System Consultant Proposal Request

The University of Texas Southwestern Medical Center at Dallas, (UT Southwestern), in accordance with provisions of the Texas Civil Statutes, Article 6252-11c, solicits to contract with a consultant to create and test a comprehensive disaster recovery plan (DRP) for UT Southwestern's telecommunications and computing systems.

Project description. The consultant selected shall provide UT Southwestern with a workable plan to maintain critical telecommunication and data processing services in the event of a disaster. Included should be a vulnerability assessment; service interruption impact assessment; interim resource needs determination; and the plan itself, fully tested, with analysis of test results. Systems included in the DRP plan are: the Academic Computing Center, with two VAX 8800 computers and associated satellite systems; the Information Processing Services Center, with an IBM 3081 and associated satellite systems; the telecommunications system, with an IBM 4341 and Rohm CBX 9000 having nodes at four sites.

The consultant shall perform the following tasks: define a disaster as related to disruption of required operational services at UT Southwestern; define critical operational and information needs in event of a disaster; suggest priorities for restoration of services to critical areas; provide mechanisms for maintenance of the DRP as the various systems grow and expand; provide for training of UT Southwestern personnel in maintenance, testing, and execution of the DRP; demonstrate, via a test, the workability of the DRP.

A committee from UT Southwestern has been appointed to work with the consultant. The consultant must provide a list of data required to support the DRP, and a timetable for securing this information. Also required is a schedule of costs for the project, a schedule of interim reports, and a payment schedule, which should be tied to interim reports. The contract shall be for a 12-month period once the contract is awarded, provided the consultant fulfills all requirements, provides the quality of work desired, and adequately documents testing of the plan. The possibility of an extension exists at the option of UT Southwestern.

Contact. Additional information may be obtained from Bonnie F. (Biff) Patton, Acting Project Manager, DRP, Information Systems, 5323 Harry Hines Boulevard, Dallas, Texas 75235, (214) 688-3410. A vendor forum will be held on Wednesday, November 1, 1989, from 2-4 p.m. in Room E6.200, UT Southwestern, 5323 Harry Hines Boulevard, Dallas. Site visits will be held at 10 a.m. and 2

p.m. on Thursday, November 2, 1989. These visits will be scheduled at the vendor forum held the preceding day.

Due Date. Proposals will be received in the Purchasing Office, Room B6.222, UT Southwestern, Dallas, by 3 p.m. on Monday, December 11, 1989. It is the responsibility of the consultant to have proposals in the previously named office by that time. Proposals received late for any reason will be returned unopened.

Procedures for Selection of Consultant. Proposals will be evaluated by the committee from UT Southwestern appointed to work with the consultant, with selection based on experience, cost considerations, and ability to perform the contract. The firm selected should be familiar with the three major systems involved, have knowledge of computing and information requirements in an academic setting, and demonstrate awareness of the necessary interaction between the systems.

Each consultant responding to the request for proposals will be required to submit a list of five client references, to include client name, address, telephone number, name of a contact person, and identification of the products and/or services provided.

Issued in Austin, Texas, on October 3, 1989.

TRD-8909245 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: October 3, 1989

For further information, please call: (512) 499-4402

Texas Water Commission

Notice of Application for Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 25-September 29, 1989.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal;

City of Cisco; wastewater treatment facility; approximately 4,500 feet north and 1,900 feet east of the intersection of U.S. Highway 183 and U.S. Highway 80, Eastland County; 10424-01; renewal;

Temple-Inland Forest Products Corporation; Diboll; approximately 1/4 mile west of U.S. Highway 59 in the City of Diboll, Angelina County; 01153; renewal;

City of McAllen; wastewater treatment facility; on Sprague Road, approximately 1.5 miles southwest of the intersection of FM Road 2061 and State Highway 107, Hidalgo County; 10633-04; renewal;

Booker Custom Packing Company, Inc.; Booker; slaughter house and meat packing plant; adjacent to and on the south side of State Highway 15, at the eastern city limits of the City of Booker, Lipscomb County; 02757; amendment;

William E. Hartzog; Spring; Lone Willow Mobile Home Park wastewater treatment facility; 345 Gulf Bank Road, Harris County; 12917-01; renewal;

City of Knox City; wastewater treatment facility; approximately 1/2 mile north of the intersection of FM Road 143 and State Highway 6, on the eastern bank of China Branch, Knox County; 10415-01; renewal;

Fort Bend County Municipal Utility District Number 13; Houston; wastewater treatment facility; approximately 1.7 miles east of the intersection of U.S. Highway 59 and State Highway 6 and approximately 1.2 miles south of State Highway 6, Fort Bend County; 12833-01; renewal;

City of Paris; water treatment plant; approximately 1 1/2 miles west of U.S. Highway 271, just below Lake Crook Dam and north of the City of Paris, Lamar County; 10479-01; amendment;

Azteca Milling Company; Edinburg; corn milling operation; south of U.S. Highway 87 (State Highway 27), approximately 1/2 mile east of FM Road 2337 and five miles southwest of the City of Plainview, Hale County; 03111; new;

Starlite Village Hospital, Inc.; Center Point; hospital; on Elm Pass Road, approximately one mile southeast of the intersection of State Highway 480 and Elm Pass Road, approximately two miles south of the City of Center Point, Kerr County; 13449-01; new;

Nalco Chemical Company; Sugar Land; an oxyalkylation plant; north of and adjacent to County Road 229, approximately 1 1/4 miles east of the intersection of County Road 229 and FM 523, northwest of the City of Freeport, Brazoria County; 01806; amendment;

Acton Municipal Utility District; Granbury; wastewater treatment plant; approximately 2.6 miles south of the intersection of U.S. Highway 377 and FM Road 167, on the west bank of McCarty Branch, 2,200 feet upstream of the confluence of McCarty Branch and Walnut Creek, Hood County; 11208-01; amendment.

Issued in Austin, Texas, on October 2, 1989.

TRD-8909213 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: October 3, 1989

For further information, please call: (512) 463-7906

Public Hearing Notice

A representative of the Texas Water Commission will conduct a public hearing on: Friday, October 27, 1989, 1:30 p.m., Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin.

This hearing is held pursuant to the Water Code, §5.103, to receive public comment on proposed amendments to

commission rules contained in Title 31 of the Texas Administrative Code, Chapter 313, relating to the protection of the Edwards Aquifer.

The proposed rules appear in Volume 14 of the *Texas Register*, beginning on page 4388, published August 29, 1989. Persons who are interested in obtaining copies of the proposed Edwards Aquifer rules may call the *Texas Register* at (512) 463-5561. Copies of the proposed amendments will not be provided at the hearing.

If you have a change of address, please notify the Texas Water Commission, Legal Division, in writing at P.O. Box 13087, Austin, Texas, 78711, if you wish to remain on the permanent mailing list to receive notices of the Edwards Aquifer hearings.

Persons who have questions concerning the hearing or who wish to submit written comments prior to the hearing should contact Robin Smith, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069. Persons who wish to submit written comments must do so by 5 p.m., Friday, November 3, 1989.

Issued in Austin, Texas, on October 4, 1989.

TRD-8908286

Jim Haley
Director, Legal Division
Texas Water Commission

Filed: October 4, 1989

For further information, please call: (512) 463-8067

profiles

A Guide to Texas State Agencies

Texas Department of Commerce

Governor William P. Clements signed House Bill 4 into law on June 16, 1987, creating the Texas Department of Commerce. The legislation consolidated several agencies, commissions, authorities, boards and programs into one state agency with the responsibility and resources for developing the Texas economy.

In its two year history, the department has played a role in the location of Sematech, the super collider, Sea World, Formosa Plastics and GTE to Texas. It has provided permit assistance to hundreds of small and minority businesses, implemented an extensive tourism program, and expanded its Mexico City office to promote the maquiladora industry.

Including administration, the agency is composed of 10 divisions.

Program Compliance — Oversees contracts between the department's federal programs and various governmental entities.

Business Development — Divided into nine sections that range in focus from international business and trade to film and music.

Small and Minority Business — Serves as a clearinghouse for information and assistance to foster, facilitate and enhance development of small, minority and women-owned business.

Tourism — Promotes non-Texan tourism. The division strives to stimulate development of tourist attractions and create a responsible and accurate national and international image of the state.

Work Force Development — Seeks to improve work force productivity by providing job training and employment opportunities to youth and adults facing job barriers. This division administers the Job Training Partnership Act.

Community Development — Provides grants to communities of less than 50,000 for improvements to public facilities and services, housing rehabilitation, physical planning and economic development.

Business Finance Assistance — Administers the Rural Industrial Development Loan Fund, Export Finance Program, Enterprise Zone Program, Domestic Business Program, Industrial Revenue Bond Program, and the Private Activity Bond Program.

Research and Planning — Provides factual, up-to-date information on business and economic conditions to in-house and out-of-house decision makers.

Marketing and Media — Functions as a catalyst to create, develop and implement a marketing program that will attract business and industry to Texas.

The department's goals are to retain and expand existing businesses, increase state tourism and improve the survival and growth rates of small and minority businesses. The agency is working to attract new business and industry from domestic and international markets and to provide a skilled, flexible and internationally competitive work force.

The Texas Department of Commerce is located in Austin and may be contacted at (512) 472-5059.