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# Texas Register

Volume 13, Number 40, May 24, 1988

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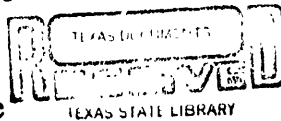
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## Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

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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: "13 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 13 TexReg 3."

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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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P.O. Box 13824  
Austin, Texas 78711-3824  
512-463-5561

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Subscriptions—one year (96 regular issues), \$80; six months (48 regular issues and two index issues), \$60. Single copies of most issues are available at \$3 per copy.

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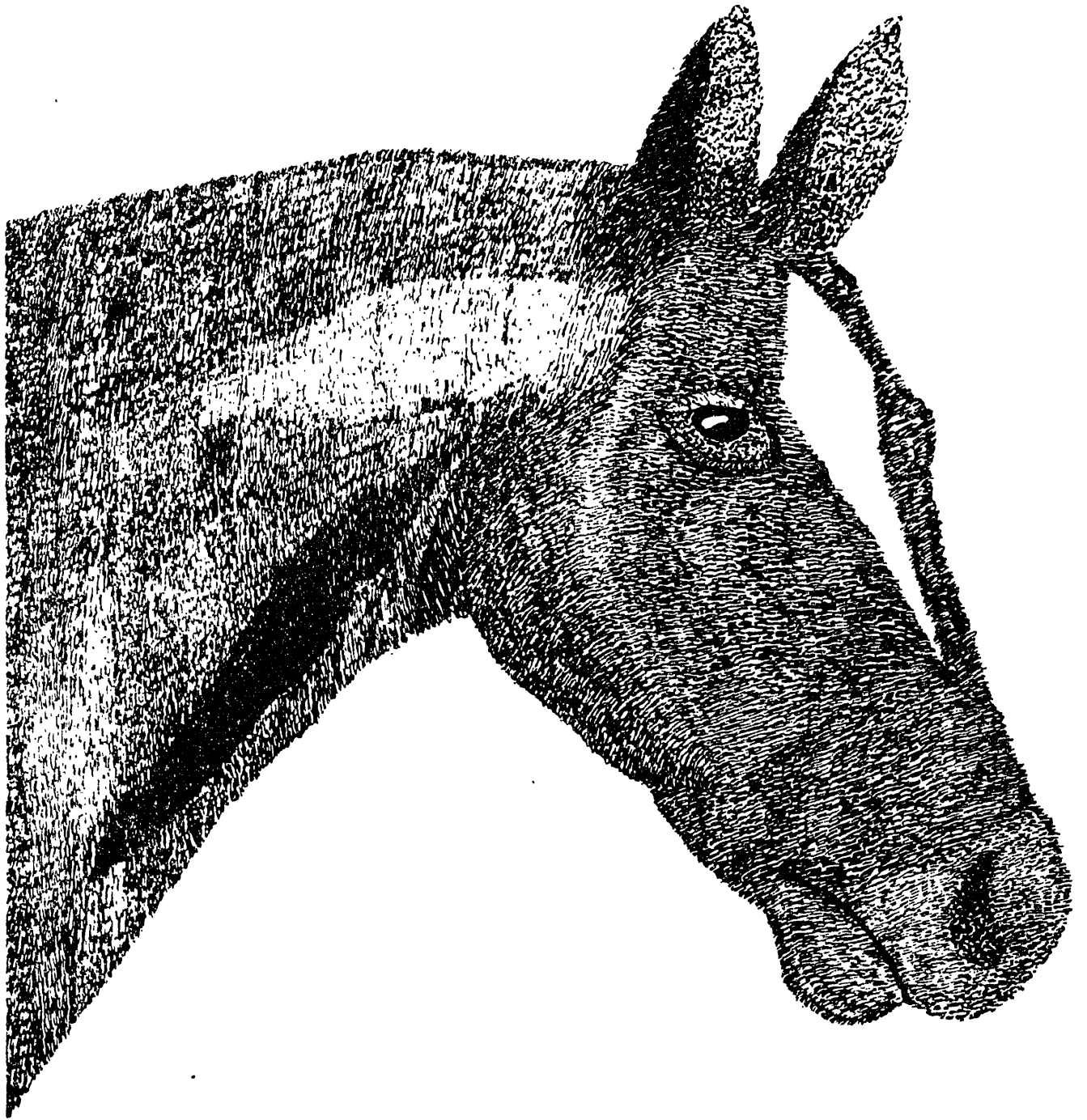
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Correction of Error



Name: Virginia Bullock  
Grade: 9  
School: Pemberton High, Marshall

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# Emergency Sections

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

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

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 26. Texas Agriculture Diversification Program: Linked Deposits

#### 4 TAC §§26.1-26.12

The Texas Department of Agriculture adopts on an emergency basis new §§26.1-26.12, concerning administration of the Texas Linked Deposit Program.

Emergency adoption of the sections is necessary so that farmers and agribusiness may have immediate access to the Texas Linked Deposit Program (the Program). Immediate access is needed because of the severity of the financial crisis in the Texas agricultural sector, demonstrated by high bankruptcy rates and unemployment in rural areas of the state, and because of the long development process required to create public financial instruments which address agricultural credit problems. The program was established by the 70th Legislature, 1987, as an emergency measure to redress the agricultural credit crisis by establishing a means for farmers and agribusiness to obtain financing for agricultural diversification. The program was designed as a test of a new financing concept. A seven-eight month trial period will be necessary to provide data for a report to the 71st Legislature on the effectiveness of the concept.

The emergency adoption sets standards of eligibility for prospective buyers under the program and defines the application process for participation in the Program.

The sections are adopted under the Texas Agriculture Code, §44.007, which authorizes the Commissioner of Agriculture to promulgate rules for administration of the linked deposit program and Texas Civil Statutes, Article 6252-13(a), which provide for the adoption of administrative rules on an emergency basis without notice and comment.

**§26.1. Definitions.** All terms defined in the Act are incorporated by reference herein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Act**—The Texas Agriculture Code, §§44.001-44.010.

**Applicant**—A person who completes and submits a borrower's application (Form Number 1)

**Application**—The forms and documents required to be submitted for review and approval by the Department and the Treasury for participation in the program, including the following forms: Borrower's Application (Form Number 1), the Lender's Linked Deposit Application (Form Number 2), a copy of the lender's loan application, borrower's financial statements, and the proposed loan.

**Crop**—A product or derivative of a product that is produced or bred on a farm or ranch including: agricultural, arboricultural, floricultural, horticultural, viticultural, apicultural, aquacultural, livestock, maricultural, poultry, wild game, or other animal products or derivatives.

**Current market rate**—The rate of interest on a United States Treasury Bill or Note with the same maturity date as a linked deposit placed under the program.

**Customarily grown**—Crops, including grapefruit, produced in this state that utilize conventional management systems, and have cash receipts equal to or exceeding five million dollars as listed in "Texas Agricultural Cash Receipts and Price Statistics", Number 239, published August 1986, except for experimental varieties of these crops.

**Default**—The failure to perform an obligation established by the loan, these rules, or agreement.

**Department**—Both the Texas Department of Agriculture and the Texas Agriculture Commissioner.

**Lender**—A financial institution that makes commercial loans.

**Loan**—The note or other evidence of indebtedness entered into between the applicant and the lender under the program.

**Person**—An individual, corporation, co-operative, organization, government or a governmental subdivision or agency, business trust, trust, partnership, association, or any other legal entity.

**Program**—The Linked Deposit Program authorized by the Act, §44.

**Treasury**—The Texas State Treasury Department and the Texas State Treasurer.  
**§26.2. Introduction.** Pursuant to the authority granted by the Act, the department prescribes the following rules regarding the administration, implementation, practice, and procedures of the Linked Deposit Program.

**§26.3. Purpose.** The purpose of the program is to encourage private commercial loans for the enhanced production, processing, and marketing of certain agricultural crops. These rules are adopted to provide standards of eligibility and procedures for obtaining financial assistance under the Act.

**§26.4. Scope.** These sections will govern all applications filed under the program. The department and the treasury may waive the applicability of any section to an application when such waiver would be in the public interest and would further the purposes of the Act.

**§26.5. Application Procedures for Applicant.** An applicant must comply with the following procedures to obtain approval of the application for participation in the program.

(1) A person may obtain an application from a lender or from the department.

(2) An applicant shall submit a complete and accurate application and any required credit documentation to the lender.

(3) An applicant shall supply all required documentation that is material to the determination of whether the applicant is qualified under the Act and these rules.

**§26.6. Application Procedures for the Lender.** A lender must comply with the following procedures to obtain approval of an application for participation in the program.

(1) A lender must be an eligible lending institution, as defined by the Act, to participate in the program.

(2) A lender that is not an approved depository may obtain the appropriate designation by filing a state depository application with the treasury.

(3) A lender may obtain the application and information about the program from the department.

(4) A lender shall review the application to determine the applicant's creditworthiness and eligibility.

(5) A loan, while under the pro-

gram, shall be set at a fixed rate of interest. Such rate shall not exceed the current market rate plus four percent.

(6) A lender shall forward two originals of the application to the department after review and approval.

(7) A lender shall certify the proposed rate of interest to be charged an applicant in an attachment to the application sent to the department along with the application. If the actual rate of interest differs from the proposed rate as certified by the lender, the lender must amend the certification after receipt of the linked deposit from the Treasury. A copy of the amended certification shall be sent to the department, as part of the compliance report.

(8) A lender must lend, or otherwise make available, the value of the deposit to the applicant within 48 hours after receipt of the linked deposit.

(9) A lender shall submit the Compliance Report (Form Number 3), and a copy of the executed loan, to the department within seven days after the loan is funded.

(10) A lender shall notify the department in writing immediately upon a default of a loan under the program.

(11) A lender shall comply with all terms and agreements set forth in the State Depository Application, the Lender's Linked Deposit Application (Form Number 2), and any other agreements and representations made to the department and the treasury, and all other terms and conditions of the loan, these rules, and the Act.

#### *§26.7. Procedure for Review by the Department.*

(a) Upon receipt of the application the department shall review the application and determine:

(1) the current availability of funds under the program;

(2) the completeness of the application;

(3) the eligibility of the applicant and the lender;

(4) the qualified use of proceeds; and

(5) compliance with the statute and rules.

(b) The department shall notify the applicant and the lender of any deficiencies in the application within 10 business days after receipt of the application. The applicant and the lender may amend the application to comply with the department's comments or withdraw the application.

(c) The department shall retain a copy of the application and forward a duplicate copy of the application with the department's recommendation to the treasury.

#### *§26.8. Acceptance and Rejection Procedures.*

(a) The treasury may review completed applications from the department.

(b) If the treasury disagrees with the department's recommendation, the treasury and the department shall meet to resolve the disagreement.

(c) Unless treasury disagrees with the department, upon receipt of the completed application from the department, the treasury will wire the linked deposit to the lender in immediately available funds and send notice to the department. The lender shall send a written confirmation of receipt of the linked deposit to the treasury.

(d) Upon receipt of the notification from the treasury, the department shall notify the applicant.

(e) The treasury shall determine the terms and conditions of the linked deposit.

(f) An applicant or a lender may request a hearing on the rejection of an application. The hearing will be conducted by the department in accordance with the contested case provisions of rules of practice and procedure of the department.

(g) An applicant may reapply for participation in the program after rejection of an application if the application complies with the standards set forth in these sections and under the Act.

(h) A lender shall terminate the linked deposit if the loan is prepaid.

(i) If a lender ceases to be a state depository, the treasury shall withdraw the linked deposits.

(j) A late payment or default on a loan by a participant does not affect the validity of the linked deposit.

#### *§26.9. Use of the Loan Proceeds.*

(a) Loan proceeds under the program shall be used for the purchase or lease of land, equipment, seed, fertilizer, direct marketing facilities, or processing facilities, or for payment of professional services. No other use of proceeds is permitted. Professional services may include but are not limited to legal, accounting, marketing, production, or pest management or engineering services.

(b) An applicant or lender may request the department to review other types of services prior to filing the application to determine whether these services are a qualified use of proceeds.

(c) Any use of loan proceeds that do not comply with these rules or any misrepresentations made to the department shall be a basis for default. The lender shall include a provision in the loan that declares a default and requires acceleration of the loan where the applicant uses the proceeds in any manner that would violate the provisions of the Act, these sections, or the loan.

#### *§26.10. Program Limitations.*

In addition to the limitations already set forth in these sections, the following limitations apply:

(1) not more than five million dollars may be placed concurrently in linked deposits under the Act;

(2) the maximum amount of a loan to produce alternative crops is \$100,000;

(3) the maximum amount of a loan to process or market agricultural crops is \$250,000;

(4) all linked deposits placed under this program shall expire upon expiration of the biennium; however, subject to legislative authorization and approval by the department and the treasury, linked deposits that expired as a result of the expiration of the biennium may be renewed;

(5) the state shall not be liable for any failure to comply with the terms and conditions of the loan, or any failure to make any payment or any other losses or expenses that occur directly or indirectly from the program;

(6) an applicant may have only one loan outstanding under the program at any given time;

(7) a person shall not receive approval of an application if a previous loan under the program is in default;

(8) an applicant who proposes operations to produce crops that are customarily grown in this state is not eligible for participation in the production financing for alternative crops portion of the program;

(9) the following customarily grown crops are not eligible for participation in the production financing for alternative crops portion of the program: bell peppers, broccoli, cabbage, cantaloupe, carrots, cattle, corn, cotton, cottonseed, cucumbers, eggs, grapefruit, greenhouse or nursery products except those listed in paragraph (10) of this subsection, hay, hogs, honeydew melons, lambs, lettuce, cow's milk, mohair, oats, spring and summer onions, oranges, peanuts, pecans, potatoes, poultry, quarter horses, rice, sheep, soybeans, sorghum grain, spinach, sugarbeets, sugarcane, sweet potatoes, turkeys, turnips, watermelons, wheat, wool;

(10) the following alternative crops that are not customarily grown in this state are eligible for participation in the production financing portion of the program; aloe vera, barley, blueberries, buffalo, catfish, cauliflower, celery, crambe, crawfish, cut flowers, eggplant, experimental varieties of customarily grown crops, table and wine grapes, greens, herbs, thoroughbred horses, jalapenos, jojoba, kenaf, llamas, lean and natural beef, lettuce, mesquite, mushrooms, native plants, oriental vegetables, peaches, pinto beans, pumpkins, rabbits, redfish, rye, shrimp, snap beans, squash, sunflowers, sweet corn, talapia, tomatoes, turnips, christmas trees, and crops not currently produced in the state. The department may, on a case by case basis,

approve for program participation crops which are not listed above.

**§26.11. Severability.** In the event that any clause or provision of these sections are held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions thereof.

**§26.12. Communications with the Department.** All communications about the program should be directed to Alice Reynolds, Program Director, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7624.

Issued in Austin, Texas, on May 16, 1988.

TRD-8804999

Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Effective date: May 16, 1988

Expiration date: September 13, 1988

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



## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Labor and Standards

#### Chapter 75. Air Conditioning and Refrigeration Contractor License

##### 16 TAC §75.3

The Texas Department of Labor and Standards adopts on an emergency basis an amendment to §75.3, concerning fee changes. The emergency amendments are needed to enforce the new refrigeration endorsement as mandated by House Bill 1961.

The section is adopted on an emergency basis to protect the safety, welfare, and health of air conditioning and refrigeration consumers in Texas.

The rule is adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the

authority to promulgate any and all rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

##### **§75.3. Fees.**

(a) All fees should be paid by cashier's check or money order made payable to the Texas Department of Labor and Standards.

- (1) Exam costs.

Both Class A and Class B License

One exam (either for environ-  
mental air conditioning or  
commercial refrigeration and  
process cooling and heating) - \$100

Two exams taken during the  
same examination period - \$150

[Class A license -

Exam \$100

Re-exam \$ 50

Class B license -

Exam \$100

Re-exam \$ 50]

(2) License fees:

Class A license -

for three years \$300

renewal every three years \$150

Class B license -

for three years \$150

renewal every three years \$ 75

Late renewal fee \$50

Issued in Austin, Texas, on May 17, 1988.

TRD-8805028

Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Effective date: May 17, 1988

Expiration date: September 14, 1988

For further information, please call: (512)  
463-3128.



### • 16 TAC §75.4

The Texas Department of Labor and Standards adopts on an emergency basis an amendment to §75.4, concerning exams. The emergency amendment is needed to comply with the Attorney General's Opinion regarding House Bill 175.

The section is adopted on an emergency basis to protect the safety, welfare, and health of air conditioning and refrigeration consumers in Texas.

The rule is adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

#### §75.4. Exams.

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

(c) All exams shall be given open book, and applicants are [encouraged] to bring reference material only. A list of reference material may be obtained from the department. [The exam shall be based on common industry practices and the latest edition of the Uniform Mechanical Code, published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or the Standard Mechanical Code published by the Southern Building Code Congress International, Inc., and herein adopted by reference. Copies may be obtained from the International Conference of Building Officials, 1601 Rio Grande, Suite 456, Austin, Texas 78701, (512) 479-8278 or Southern Building Code Congress International, Inc., 3355 Bee Cave Road, Suite 404, Austin, Texas 78746, (512) 327-8278. An applicant will also need to know the Texas Boiler Law and Chapter 65 of this title (relating to Boiler Division) as they apply to air conditioning contracting.]

(d) Separate tests are administered for environmental air conditioning and for commercial refrigeration and process cooling and heating. Both tests may be taken during the same testing period, either during the same day, or on successive days. Tests may also be taken

in different testing periods, which will result in higher fees for the exams and an additional fee for revising the license.

(e)[d] Class A license exam shall consist of 100 questions. Class B license exam shall consist of 50 questions.

(f)[e] An applicant who correctly answers 70% of the exam questions shall be eligible for a State of Texas air conditioning and refrigeration contractors license, provided the license fee has been paid and the proof of insurance coverage and Certification of Franchise Tax Status or Non-Incorporation have [has] been received by the department. [An applicant who is employed by or is an officer of a corporation must also furnish a "Certificate of Good Standing", which may be obtained from the State Comptrollers, 1-800-252-5555.] Eligibility for a license shall last not more than two years [90 days] from the date of examination result notification. Applicants who pass the exam but do not choose to acquire a license before the two year [90 day] period must take a re-exam and pay the required re-examination fee.

(g) An applicant whose business affiliation is a corporation must submit a certification by the corporation that its franchise taxes are current (or if a corporation is exempt from the payment of the franchise tax or an out-of-state corporation that is not subject to Texas franchise tax is involved, to certify to a statement to that effect). An applicant whose business affiliation is not incorporated must submit a certification to that effect. Making a false statement as to corporate franchise tax status is grounds for the denial, suspension, or revocation of the license.

(h) A form for Certification of Franchise Tax Status or Non-Incorporation will be included in the information packet sent to prospective applicants, and will be handed out at each examination. Contractors renewing their licenses must certify by indicating either that their franchise tax is paid or that they are exempt, and signing the renewal notice which will be sent to them.

(i)[f] All applicants will be notified of the examination results within 30 days of the exam date.

(j)[g] An applicant who does not correctly answer 70% of the exam questions (or make a minimum passing grade of 70) shall be eligible for re-examination, provided the applicant notifies the director in writing and pays the re-exam fee for each re-exam taken. The written notice must be received by the director not less than 45 [60] days prior to being scheduled for a re-examination.

(k)[h] An applicant shall be notified by the director of the scheduled examination date within a reasonable amount of

time prior to the examination. Applicants who are scheduled for an examination but fail to appear as scheduled and have failed to notify the director not less than 72 hours prior to the scheduled exam must reapply and pay the examination fee prior to being rescheduled. An applicant who notifies the director less than 72 hours prior to a scheduled examination of the need to reschedule due to unforeseen circumstances (subject to approval by the director) may do so without the required rescheduling fee. An applicant may only be rescheduled in this manner one time. The examination notification form must be submitted confirming the reason for rescheduling [pay the re-examination fee prior to being rescheduled.].

Issued in Austin, Texas, on May 17, 1988.

TRD-8805027

Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Effective date: May 17, 1988

Expiration date: September 14, 1988

For further information, please call: (512)  
463-3128



## Chapter 80. Tow Trucks

### • 16 TAC §§80.1-80.10

The Texas Department of Labor and Standards repeals on an emergency basis §§80.1-80.10, concerning tow trucks operated for compensation in Texas. These sections are to be repealed in order that new sections containing amended provisions may be adopted on an emergency basis.

The sections are repealed on an emergency basis to protect the safety, welfare, and health of tow truck users in Texas.

The sections are repealed on an emergency basis under Texas Civil Statutes, Article 6687-9b, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

§80.1. Definitions.

§80.2. Scope.

§80.3. Certificate of Registration.

§80.4. Application Process.

§80.5. Registration Fees.

§80.6. Required Identification.

§80.7. Insurance Requirements.

§80.8. Safety Requirements.

§80.9. Denial; Suspension; Revocation.

§80.10. Notice and Hearing.

Issued in Austin, Texas, on May 17, 1988.

TRD-8805032

Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Effective date: May 17, 1988

Expiration date: September 14, 1988

For further information, please call: (512)  
463-3128



• 16 TAC §§80.1-80.5, 80.8-80.10

The Texas Department of Labor and Standards adopts on an emergency basis new §§80.1-80.5 and §§80.8-80.10, concerning tow trucks operated for compensation in Texas. These sections are to be adopted in order to establish minimum equipment and procedures for the safe operation and prudent insuring of tow trucks operating for compensation within Texas.

The sections are adopted on an emergency basis to protect the safety, welfare, and health of tow truck users in Texas.

The sections are adopted on an emergency basis under Texas Civil Statutes, Article 6687-9b, which provide the Commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

**§80.1. Authority.** These rules are promulgated under the Authority of the Texas Tow Truck Act (Texas Civil Statutes, Article 6687-9b).

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

The Act—Texas Civil Statutes, Article 6687-9b, relating to tow trucks.

**Certificate of Registration**—The document issued by the department authorizing the operation of a specific tow truck.

**Consent tow**—Any tow conducted with the permission of, or at the direction of, the vehicle's legal or registered owner, or such owner's authorized representative. Except as set forth in the definition of "nonconsent tow" below, a tow will be considered a consent tow where the owner is able to give consent.

**Department**—The Texas Department of Labor and Standards.

**Motor vehicle**—A vehicle subject to registration under the Certificate of Title Act (Texas Civil Statutes, Article 6687-1) or any other device designed to be self-propelled or transported on a public highway.

**Nonconsent tow**—Any tow conducted without the permission of, or not at the direction of, the vehicle's legal or registered owner, or such owner's authorized representative, regardless of the vehicle's location or condition. Towing the vehicle of a person who has been taken into custody by a law enforcement agency is considered a nonconsent tow. Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate.

**Operate**—Using a tow truck to tow,

winch, or otherwise move a motor vehicle.

**Operator**—Any person operating a tow truck, regardless of whether the person owns the truck.

**Original application**—The written application form, proof of insurance, photographs, and any and all applicable fees.

**Registrant**—A tow truck owner who has obtained a department certificate of registration for a tow truck.

**Renewal application**—The written application form, proof of insurance, and any and all applicable fees.

**Tow truck**—A motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move disabled motor vehicles. Wheeled vehicles, including those equipped with a mechanical, electrical, or hydraulic winch, hydraulic wheel lift, or mechanical wheel lift, that are used to tow, winch, or otherwise move disabled vehicles are considered tow trucks. Rollbacks and vehicle carriers are considered tow trucks. Any mechanical device without wheels will not be considered a tow truck.

**Tow truck owner**—A person engaged in the business of using a tow truck to tow, winch, or otherwise move a motor vehicle.

**§80.3. Registration Requirements.**

(a) Each tow truck must have its own certificate of registration. A certificate of registration is not assignable or transferable.

(b) Each certificate of registration expires at midnight on the 31st day of January of each year.

(c) A certificate of registration allows a tow truck to be operated for compensation in the state of Texas, provided the tow truck complies with all other applicable state laws.

(d) The certificate of registration shall be kept in the tow truck at all times.

(e) A person, corporation, partnership, or any other entity desiring to operate a tow truck shall file a written application with the department annually on a form provided by the department for that purpose. The written application form shall be accompanied by a certificate of insurance and the required fees. The application must be signed by the truck's owner or the owner's authorized agent.

(f) The following information is required in the original application:

- (1) year and make of the vehicle;
- (2) vehicle identification number;
- (3) vehicle certificate of title

number;

(4) empty weight;

(5) gross weight;

(6) carrying capacity;

(7) current Texas license plate number;

(8) name, address, and telephone number of tow truck owner;

(9) sales tax identification number, if applicable; and

(10) two photographs of the tow truck, one of each side, showing the name, address, and telephone number of the business operating the tow truck permanently inscribed on each side in letters no less than two inches high. For purposes of this requirement, the address need not include the street address or post office box, but must include the city where the business is based. If the business is based in an unincorporated area, the county name must appear on the sides of the truck.

(g) A renewal application must contain:

(1) the address and phone number of the tow truck owner if it is different from the original application;

(2) the vehicle's current Texas license plate number; and

(3) the vehicle's current department certificate of registration number.

(h) Both original and renewal applications shall include a certification that the truck complies with the safety and insurance requirements as set forth in §80.5 and §80.9 of this title (relating to Insurance and Technical Requirements).

(i) If the applicant is a corporation, the individual who signs the application form, by his signature, is certifying that the corporation is in good standing with the state comptroller's office.

(j) Annual renewal applications may be submitted between November 1 and January 31 of each year. A certificate of insurance and fees shall be submitted with the written renewal application. Regardless of when a renewal application is submitted, the renewal certificate of registration will be valid from February 1 through January 31.

(k) If a tow truck owner fails to renew the certificate of registration before it expires, he may renew it on payment of the renewal fee and a \$25 late fee. This renewal certificate of registration will be valid from February 1-January 31. If an application for renewal is not complete by the 31st day after the current certificate of registration expires, the certificate of registration may not be renewed. To reinstate the certificate of registration, the owner must comply with the requirements for an original certificate of registration.

**§80.4 Exemptions.** No person shall operate a tow truck in the State of Texas unless the truck has been registered with the department. Pursuant to the Texas Tow Truck Act (Texas Civil Statutes, Article 6687-9b), these rules apply only to tow trucks being operated for compensation, whether direct or indirect. The only exemption is for tow trucks that tow only vehicles that belong to the tow truck owner. As proof of this exemption, the tow truck operator must carry proof of ownership for any vehicle he is towing.

**§80.5. Insurance.**

(a) A registrant shall procure, and keep in full force and effect, all insurance policies required by this section. At the time of original registration, and upon renewal, the insurance carrier, or its authorized agent, must file a certificate of insurance with the department. The certificate must certify the type and amount of insurance coverage and provide for 30 days notice to the department of cancellation of or material change in the policy.

(b) The policies and certificates shall be issued by a casualty insurance company which is authorized to do business in this state and shall comply with all applicable State Board of Insurance regulations.

(c) The coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of the operation of a tow truck shall set minimum limits for each tow truck as follows.

(1) Each tow truck must have liability insurance coverage. It is the intent of this subsection to provide for insurance covering damage, except that to the towed vehicle, for which the tow truck owner is liable.

(A) Each tow truck with a gross vehicle weight of 26,000 pounds or less must carry \$300,000 combined single limit coverage.

(B) Each tow truck with a gross vehicle weight over 26,000 pounds must carry \$500,000 combined single limit coverage.

(2) Each tow truck must have tow truck cargo, on-hook or similar type insurance. It is the intent of this subsection to provide insurance covering damage to the towed vehicle while it is in the care, custody, or control of the tow truck owner and for which said owner is liable. It is further the intent of this subsection that the insurance cover damage to the towed vehicle that is the direct or indirect result of an improper hookup.

(A) Each tow truck with a gross vehicle weight 26,000 pounds or less must carry cargo, on-hook, or similar type insurance in an amount not less than \$10,000. In lieu of this coverage, each truck

may have garagekeeper's legal liability insurance with direct coverage options in an amount not less than \$10,000 to cover damage to the towed vehicle.

(B) Each tow truck with a gross vehicle weight over 26,000 pounds and a tandem axle must have tow truck cargo or on-hook insurance for the coverage of a towed vehicle in an amount not less than \$25,000. In lieu of this coverage, each truck may have garagekeeper's legal liability insurance with direct coverage options in an amount not less than \$25,000 to cover damage to the towed vehicle.

(d) The certificate of insurance shall also specify that the policy covers the vehicle subject to the certificate of registration; identify the vehicle by make, model, and vehicle identification number; and indicate that the policy complies with the intent of and minimum liability limits established by these rules.

(e) Each tow truck must be insured so as to meet the requirements of all other applicable statutes in addition to meeting the insurance requirements set forth in this chapter.

(f) A tow truck registration issued under the Act shall automatically be suspended upon cancellation or expiration, for whatever reason, of any insurance required by this section.

**§80.8. Fees.**

(a) The annual fee for an original certificate of registration is \$125 for each truck.

(b) The annual fee for a renewal certificate of registration is \$50 for each truck.

(c) All fees are non-refundable.

(d) A late fee of \$25 will be charged if the completed renewal certificate of registration application is not postmarked by midnight, January 31st of each year.

(e) A \$25 fee will be charged for issuance of a duplicate certificate of registration.

**§80.9. Sanctions.**

(a) The department, after a hearing, shall deny, suspend, or revoke a certificate of registration issued under the Act if the department determines that:

(1) the tow truck does not meet the requirements set forth in these rules; or

(2) the certificate of registration applicant knowingly supplied false or incomplete information on the application.

(b) Pursuant to Texas Civil Statutes, Article 6252-13a, the department, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction that directly relates

to the duties and responsibilities involved in operating a tow truck. The department may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation or mandatory supervision.

(1) In determining whether a criminal conviction directly relates to the operation of a tow truck, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the safe operation and insuring of a tow truck;

(C) the extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person was previously involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a tow truck.

(2) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(3) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law en-

forcement, and correctional authorities as required.

(4) The applicant shall also furnish proof, in such form as may be required by the department, that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(c) Pursuant to Texas Civil Statutes, Article 6252-13a, before denying, suspending, or revoking any certificate of registration, the commissioner shall give the applicant or registrant at least 10 days written notice of the charges against him or the question to be determined and of the date and location of the hearing.

(d) The applicant or registrant is entitled to an opportunity to be present and to be heard in person or by counsel and to an opportunity to offer evidence by oral testimony, by affidavit, or by deposition.

(e) Written notice may be served by personal delivery to the applicant or registrant or by certified mail to the applicant's or registrant's last known mailing address.

(f) The hearing must be conducted in a manner that will provide the applicant or registrant due process of law and that is consistent with the provisions of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(g) If, after a hearing, the commissioner determines that a certificate of registration should be denied, revoked, or suspended, the applicant or registrant has 30 days in which to appeal the commissioner's final order to the Travis County district court.

#### *§80.10. Technical Requirements.*

(a) Each tow truck must display a tow truck license plate issued by the Department of Motor Vehicles under Texas Civil Statutes, Article 6675a-1. The plate must be permanently attached and must face toward the rear of the vehicle. Additionally, the plate should be placed as high up on the vehicle as possible.

(b) Each truck shall have brakes that meet reasonable braking performance requirements under all loading conditions.

(c) No tow truck shall tow more than its actual weight unless it has a 35,000 pound winch capacity (single or dual line), a 5/8 inch cable or its equivalent, and air brakes. If a certified law enforcement officer at the scene of an accident determines that the scene must be cleared immediately, and a heavy-duty tow truck is not available, the law enforcement official may waive this requirement at the scene.

(d) If a tow truck is pulling two or

more vehicles, the tow truck must be able to tie into and operate the service brakes on the rearmost towed vehicle. This provision does not apply if the rearmost towed vehicle has only vacuum brakes.

(e) Each tow truck shall be equipped with a power winch, winch line, and boom with a lifting capacity of not less than 8,000 pounds, single line capacity or a hydraulic or mechanical wheel lift with a lifting capacity of not less than 2,500 pounds.

(f) All tow trucks shall carry the following as standard equipment:

(1) a tow sling or hydraulic lift which is sufficient to prevent the swinging of any equipment being transported. This subsection does not apply to vehicle carrier and rollbacks unless the wheels of a vehicle they are towing are in contact with the ground;

(2) 5/16-inch link steel safety chains for tow trucks with a gross vehicle weight of 10,000 pounds or less and 1/2-inch link steel safety chains for tow trucks with a gross vehicle weight over 10,000 pounds. These link sizes are minimums;

(3) rope, wire, or straps suitable for securing doors, hoods, trunks, etc; and

(4) outside rearview mirrors on both sides of the truck.

(g) Any tow truck towing from the scene of an accident must be equipped with the following:

(1) tow trucks with a gross vehicle weight of 26,000 or less shall carry a five pound fire extinguisher. Tow trucks with a gross vehicle weight over 26,000 pounds shall carry one ten pound fire extinguisher or two five pound fire extinguishers. The fire extinguisher or extinguishers shall be properly filled and located so they are readily accessible for use. All fire extinguishers shall meet no less than the requirements of the *National Fire Protection Handbook, 14th Edition* (1976), and shall be so labeled by a national testing laboratory approved by the department upon finding that the laboratory's testing procedures are reliable;

(2) one crowbar or wrecking bar of not less than 36 inches in length with a wedge head;

(3) a broom;

(4) three portable red emergency reflectors, orange safety cones or flares;

(5) a container to carry glass and debris cleaned from streets when picking up a damaged or disabled vehicle;

(6) a spotlight or flashlight;

(7) all tow trucks shall be equipped with two-way communication; and

(8) flashing warning lights that

comply with the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701-d).

(h) If a tow truck is pulling a vehicle weighing 10,000 pounds or more, and the towed vehicle does not have functioning tail lights, the tow truck operator must supply the towed vehicle with functioning tail lights. The tail lights must provide safe lighting of the towed vehicle.

(i) If a tow truck uses a winch, a safety wrap must be performed.

(j) Safety chains must be used on all tows.

(k) All tow trucks with a slip-in bed must have the bed properly secured to the frame of the truck by a minimum of eight one-half inch diameter bolts. At least four of these bolts must be at the front of the slip-in bed.

(l) No tow truck shall lift or tow more than the lifting capacity permits.

(m) All tow truck operators must have a valid driver's license of the proper class.

(n) A tow truck operator shall ensure that while he is lifting a vehicle in preparation for towing that no one but he shall be within a safe distance of the tow truck and vehicle to be towed. A safe distance is at least twice the distance between the end of the boom and the point of hook-up on the vehicle being winched or twice the distance the car is being lifted, whichever is greater. If a hydraulic lift is being used, a safe distance is twice the distance to which the lift arm is extended.

(o) If at any time during the process of hooking up or winching, a tow truck or vehicle to be towed is in a lane of traffic, the flow of traffic must be diverted. If the tow truck cable is strung across a lane or lanes of traffic, the traffic must be stopped or diverted by a law enforcement officer before winching or lifting the vehicle to be towed.

(p) The operator of each tow truck called to the scene of an accident shall remove from the roadway all resulting wreckage or debris, including all broken glass, unless otherwise directed by a peace officer, representative of the Texas Department of Highways or, in the case of hazardous materials, the Texas Water Commission. Resulting wreckage or debris does not include the towed vehicle's load or cargo.

(q) All required safety mechanisms of the tow truck, including but not limited to all headlights, tail lights, turn signals, brakes, brake lights, hazard lights, flashing warning lights, windshield wipers, wiper blades, and tires, shall operate and/or be in good repair.

(r) All tow trucks shall operate within the applicable recommended towed



vehicle manufacturer's safety policies and procedures.

(s) No tow truck shall use a tow bar with towing pins or a tow blade to tow a vehicle more than eight blocks. After eight blocks, or sooner, the tow truck operator must drop the vehicle and rehook it following all safety procedures established by this section and by the manufacturer of the vehicle being towed.

(t) Each tow truck must meet the requirements of all other applicable statutes in addition to meeting the requirements of these rules.

Issued in Austin, Texas, on May 17, 1988.  
TRD-8805030 Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Effective date: May 17, 1988

Expiration date: September 4, 1988

For further information, please call: (512) 463-3128.

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

**Chapter 1. General Administration**

**Subchapter A. Rules of Practice and Procedure**

• **28 TAC §1.36**

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §1.36, concerning rules of practices and procedure for a 60-day period effective May 20, 1988. The text of amended §1.36 was originally published in the January 29, 1988, issue of the *Texas Register* (13 TexReg 528).

Issued in Austin, Texas on May 17, 1988.  
TRD-8805035 Nicholas Murphy  
Chief Clerk  
State Board of Insurance

Effective date: May 20, 1988

Expiration date: July 20, 1988

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

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**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

**Chapter 3. Tax Administration**

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

• **34 TAC §3.291**

The Comptroller of Public Accounts adopts

on an emergency basis §3.291, concerning contractors. The emergency amendments are needed to distinguish contractors who build new structures or repair or remodel residential property and those persons who repair, remodel, or restore commercial property. Effective January 1, 1988, a change in the Tax Code, Chapter 151, makes a distinction between the two activities. Persons who repair, remodel, or restore commercial property should refer to §3.357 of this title (relating to Real Property Repair and Remodeling). Contractors may now issue a resale certificate only when they know the tangible personal property they are purchasing will be resold. This means that contractors maintaining an inventory of fungible goods which are used on both lump-sum and separated contracts must pay tax when the items are purchased. With good records, a contractor may have credit for the tax paid at the time of purchase against the tax the contractor must collect and report under a separated contracts. The last amendment states the comptroller's position for persons who haul dirt, sand, gravel and similar materials.

This amendment is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.291. Contractors.** (Texas Tax Code §151.056, §151.311).

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

(1) (No change.)

(2) Contractor—Any person who builds new structures, completes any part of an uncompleted new structure which is an improvement to real property, or builds or makes an improvement to residential property [improves real estate] and who[, in making the improvement,] incorporates tangible personal property belonging to him into the property being improved. The term includes subcontractors but does not include material men, [and] suppliers or persons who repair or remodel commercial realty.

(3)-(4) (No change.)

(5) Repairs, remodeling, or restoration of commercial realty. See §3.357 of this title (relating to Real Property Repair and Remodeling) for the responsibilities of persons who repair, remodel, or restore commercial realty.

(6)[(5)] Separated contract—A contract in which the agreed contract price is divided into a separately stated agreed contract price for materials and a separately stated agreed contract price for skill and labor. If prices of materials and labor are separately stated, the fact that the charges are added together and a sum total given is irrelevant. Cost-plus contracts are generally regarded as separated contracts.

(b) Tax responsibilities of contrac-

tors improving real property belonging to nonexempt customers.

(1) (No change.)

(2) Lump-sum contracts.

(A) (No change.)

(B) Contractors who, in addition to performing lump-sum contracts, sell taxable items over the counter or who also perform separated contracts, may not maintain a tax-free inventory [of items held for resale]. Only items which the contractor knows will be resold may be purchased [exclusively for resale may be purchased] tax free by issuing a resale certificate to suppliers in lieu of tax. A contractor must hold a sales tax permit to issue a resale certificate, and must collect, report, and remit tax to the comptroller as required by §3.286 of this title (relating to Seller's Responsibilities) when items purchased for resale are sold.

(C)-(D) (No change.)

(3) Separated contracts.

(A) (No change.)

(B) Contractors performing separated contracts must hold sales tax permits and collect, report, and remit the tax as required by §3.286 of this title (relating to Seller's Responsibilities). Contractors purchasing materials specifically for incorporation into realty under separated contracts may issue suppliers a resale certificate in lieu of tax. See §3.285 of this title (relating to Resale Certificates; Sales for Resale; Resale Certificate ). The purchase, rental, or lease of equipment for use in performing a nonexempt contract is subject to tax.

(C)-(D) (No change.)

(4)-(6) (No change.)

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

(e) Dirt and gravel haulers. Persons hauling dirt, gravel, sand, and similar materials are performing a nontaxable service. Sales tax is not due on the hauler's charge for the service regardless of whether the hauler's charge to the customer is lump sum or separates the charge for material from the charge for transportation. The person providing the service must pay sales tax on materials at the time of purchase. A resale certificate may not be issued in lieu of tax. When the nontaxable service is provided for an entity exempt from tax, the person purchasing the material may issue an exemption certificate in lieu of paying tax on materials.

Issued in Austin, Texas, on May 16, 1988.

TRD-8804998

Bob Bullock  
Comptroller of Public  
Accounts

Effective date: May 16, 1988

Expiration date: September 13, 1988

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VIII. Commission on Fire Protection Personnel Standards and Education

#### Chapter 233. Minimum Standards Manual

#### Basic Fire and Arson Investigator Certificate for Law Enforcement Officers

##### • 37 TAC §233.66

The Commission on Fire Protection Personnel Standards and Education adopts on an emergency basis, new §233.66, concerning basic fire and arson investigator certificate for law enforcement officers. This section covers training requirements necessary for law enforcement officers to obtain state certification as a fire and arson investigator.

Adoption of the section on an emergency basis is necessary to insure public safety since arson fires have increased in Texas the past two years. The section will provide law enforcement personnel with skills to investigate and prevent arson fires in Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4413(35), §2, (Recodified as the Government Code, Executive Branch, Chapter 416), which provide the Commission on Fire Protection Personnel Standards and Education with the authority to promulgate rules and regulations necessary to carry out the provisions of the Act.

§233.66. *Basic Fire and Arson Investigator Certificate for Law Enforcement Officers.* Law enforcement personnel designated as fire and arson investigators by the local government having jurisdiction must meet the following criteria for state certification as a fire and arson investigator.

(1) **Certification Requirements.** Law enforcement officers must be full-time, full-paid to obtain state fire and arson investigator certification and meet or exceed the requirements in this section. To attain this certification, the following requirements must be met.

(A) Applicants must possess a current basic peace officer certificate and license from the Commission on Fire Protection Personnel Standards and Education.

(B) Applicant must complete a commission-approved basic course in fire and arson investigation as defined by §233.61 of this title (relating to Basic Fire and Arson Investigator Certificates).

(C) Failure to comply with any certification rules(s) will invalidate application and/or certification.

(2) **Certification Procedure.** Applications for certification must be made to the Commission on Fire Protection Personnel Standards and Education in accordance with the following procedures.

(A) Applicant must utilize Commission Form CFP-3B when applying to the commission for certification.

(B) Applicant must submit proof of training as described by §233.61 of this title (relating to Basic Fire and Arson Investigator Certificates) when applying for certification.

(C) Applications submitted for certification must have the requested signatures or else the application will be considered invalid.

(D) Authorized signatures are required on every application for certification. The following signatures are acceptable in the indicated situations.

(i) The fire chief's signature is required on applications in cities, counties, or government entities that have full-time, full-paid fire chiefs.

(ii) The fire marshal's signature is required on applications in cities, counties, or government entities that have a full-time, full-paid fire marshal, but not a full-time, full-paid fire chief.

(iii) The police chief's signature is acceptable in those cities without either a full-time, full-paid fire chief or a full-time, full-paid fire marshal.

(iv) The sheriff's signature is acceptable in counties without a county fire chief or county fire marshal.

(E) A letter stating the applicant is designated as a fire and arson investigator must accompany all applications. The letter must be signed by one of the authorized persons indicated in the preceding paragraphs.

(F) A \$20 certification fee must accompany all certification applications. Certification fees must be paid with a cashier's check, money order, or government (city, county, state, or other government) check.

(G) Certifications must be renewed annually in order to maintain a valid current certification. Renewal notices are mailed on an annual basis.

(3) **Inactive Certifications.** All valid, current fire and arson investigator certificates are placed on the inactive certification list when a law enforcement officer leaves full-time, full-paid employment; transfers from one department to another; or is no longer designated as an official fire and arson investigator. A commission termination form, CFP-5, must be forwarded to the commission office within 10 days after any one of the previously described events occur.

Issued in Austin, Texas, on May 13, 1988.

TRD-8804974

Ray L. Goad  
Executive Director  
Commission on Fire  
Protection Personnel  
Standards and  
Education

Effective date: May 16, 1988

Expiration date: August 14, 1988

For further information, please call: (512)  
474-8066

#### Minimum Standards for Fire Prevention Personnel

##### • 37 TAC §233.101, §233.102

*(Editor's note: The text of the following sections proposed for emergency repeal will not be published. The sections may be examined in the offices of the Commission on Fire Protection and Personnel Standards and Education or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)*

The Commission on Fire Protection Personnel Standards and Education adopts on an emergency basis the repeal of §233.101 and §233.102, concerning minimum standards for fire prevention personnel, and simultaneously adopts on an emergency basis new §233.101 and §233.102, concerning minimum standards for fire prevention personnel; these sections list people eligible for certification and time requirements for completing training requirements.

Due to increases in fires over the past two years, adoption of these repeals on an emergency basis is necessary to educate people and prevent fires to insure the public safety of Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 4413(35), §2, (Recodified as the Government Code, Executive Branch, Chapter 416), which provide the Commission on Fire Protection with the authority to promulgate rules and regulations necessary to carry out the provisions of the Act.

§233.101. *Eligibility.*

§233.102. *Completion of Requirements.*

Issued in Austin, Texas, on May 13, 1988.

## Aircraft Crash and Rescue Fire Fighter Standards

### 37 TAC § 233.142

The Commission on Fire Protection Personnel Standards and Education adopts on an emergency basis an amendment to §233.142, concerning minimum standards for aircraft crash and rescue fire fighters that work at Texas airports.

Adoption of this amendment on an emergency basis is necessary to insure public safety to air travelers and fire fighters assigned to airports. The Federal Aviation Administration has already mandated this training, and Texas must adopt the same training or fire fighters and airports will be in violation of Federal law.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4413(35), §2, (Recodified as the Government Code, Executive Branch, Chapter 416), which provide the Commission on Fire Protection with the authority to promulgate rules necessary to carry out the provisions of the Act. *§233.142. Minimum Standards for Aircraft Crash and Rescue Fire Fighters.*

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

(c) Certification.

(1) Aircraft crash and rescue fire fighter certification is based upon a combination of the Federal Aviation Administration's (FAA) airport indexing system and airports total number of annual take-off and landings.

(A) All FAA Index A airports, and airports that are not indexed, requires TX-3 aircraft crash and rescue certificate-127 [52] clock hours.

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

(2) (No change.)

(d) Courses.

(1) An individual must complete the following courses for TX-3 aircraft crash and rescue certification.

(A)-(G) (No change.)

(H) Aircraft Emergency Evacuation Techniques and Procedures-4 [2] clock hours. Evacuation through: normal openings, emergency exits, and forced entry points.

(I) (No change.)

(J) Aircraft Crash & Rescue F.F. Procedure [Fire Ground Operations] 10 [4] clock hours. Size up, initial attack, approach, and rescue at aircraft fires: brakes, wheels, and fuel servicing.

(K) (No change.)

(L) Communication-3 [2] clock hours. Radios, radio procedures governing FCC regulations radio terminology and land signals.

(M)-(P) (No change.)

(Q) Forcible Entry, Rope, and Portable Extinguishers-10 clock hours.

(i) Forcible entry. Forcible entry practices will include general building construction, forcible entry tools, methods for forcing locked doors and windows, types of doors and windows, opening techniques for wall, ceilings, roofs and floors, special techniques for opening wood, metal, masonry, and concrete roofs, walls, and ceilings; caution and procedures to follow in these operations.

(ii) Rope practices. Rope practice will include physical characteristics of rope, types of rope, using rope safely for life lines, rescue lines, hoisting and anchoring lines, ladder halvard, block and tackle, and rope slings. Common terminology when using block and tackle tying knots and hitches used in the fire service, such as; the timber hitch, becket or sheet bend, bowline knot (sometimes called the king of knots), clove hitch, half sheep shank with a safety, and the chimney hitch. Hoisting tools, equipment, and tightening a rope between objects. Crowing, whipping, splicing, colling, inspection, and care of ropes.

(iii) Portable Extinguishers. Portable extinguishers will include classification of fires and selecting proper extinguishers, extinguisher classification, suitable extinguishers for special hazards, installing, marking and inspecting extinguishers, and specialized extinguishers for special fires.

(R) Ventilation Practices-4 clock hours. Ventilation applied to fire fighting: purpose and scope, responsibility of fire fighters, objectives and advantages; combustion and heat: products of combustion, smoke explosion or back drafts, transmission of heat and expansion of gases; sizing up the situation for ventilation: situations requiring ventilation, heat conditions, fire severity, life hazard to occupants, potential hazard to fire fighters, rescue work, and evaluating the facts: top or vertical ventilation: selecting place, top ventilation procedures and safety precautions; cross or horizontal ventilation: structural characteristics of building, exposures, hose lines, protective clothing, and breathing equipment, application of water fog as an aid, and precautions; forced ventilation: advantages and disadvantages, and forced ventilation equipment; other uses for

Effective date: May 16, 1988

Expiration date: August 14, 1988

For further information, please call: (512) 474-8066.

The Commission on Fire Protection Personnel Standards and Education adopts on an emergency basis the new §233.101 and §233.102, concerning minimum standards for fire prevention personnel, and simultaneously adopts on an emergency basis the repeal of existing §233.101 and §233.102. These sections list people eligible for certification and time requirements for completing training requirements.

Due to increases in fires over the past two years, adoption of these sections on an emergency basis is necessary to educate people and prevent fires to insure the public safety of Texas.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(35), §2, (Recodified as the Government Code, Executive Branch, Chapter 416), which provide the Commission on Fire Protection with the authority to promulgate rules and regulations necessary to carry out the provisions of the Act.

*§233.101. Eligibility.* All full-time, full-paid fire prevention inspectors employed by any political subdivision in Texas who comply with the certification requirements in §§233.102-233.107 of this title, (relating to Completion of Requirements, Service Requirement, Certification, Courses, Inspector "B" Certification, and Inspector "A" Certification), shall be eligible for certification by the commission. Applicants for certification must furnish proof of certification requirements, and full-time, full-paid status to commission with request for certification. *§233.102. Completion of Requirements.*

All full-time, full-paid fire prevention inspectors employed by any political subdivision in Texas must complete the appropriate certification requirements as defined in §233.104 of this title (relating to Certification), within one year from date of initial appointment to such position.

Issued in Austin, Texas, on May 13, 1988.

Effective date: May 13, 1988

Expiration date: August 14 1988

For further information, please call: (512) 474-8066

ventilation.

(S) Rescue Operations-12 clock hours. Purpose and scope: body protection, primary and secondary functions, rescue incidents and situations; respiratory protection equipment: the respiratory tract, and respiratory hazards to rescue workers; using protective breathing equipment; inspection, care and testing of equipment; other protection equipment: standards and special protective clothing, rope guidelines, radiation detection equipment, ambulance and rescue equipment; rescue practices: knots, raising and lowering victims, rescue methods, and techniques, pre-rescue planning and rescue situations.

(T) First Aid-40 clock hours. Aspects of first aid: first aid in the fire service taking charge, general first aid procedures, and legal aspects of first aid. Bleeding control, normal and induced breathing applying mechanical resuscitation, care and cleaning equipment. Oral poisoning and common emergencies, physical shock and wounds, the nervous system, openings in the skin. Effects of heat or cold: burns, effects of excessive heat, effects of excessive cold. The skeletal system: bones and fractures, muscles and tendons, bandaging and transporting; moving victims: planning for transportation and preparation of the victim for transfer.

(2) Total number of hours for TX-3 Aircraft Crash and Rescue Certificate-127 [52] clock hours.

(e) TX-2 Aircraft Crash and Rescue Certificate.

(1) To qualify for the TX-2 certificate, the applicant must have completed all the requirements for TX-3 certification, plus the following additional subjects and hours:

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

(E) Aircraft Emergency Evacuation Techniques and Procedures-0 [2] clock hours in addition to the requirements in subsection (d)(1)(H) of this section. Evacuation through: normal openings, emergency exits, and forced entry points; operations in smoke filled atmospheres; search and rescue techniques.

(F) (No change.)

(G) Aircraft Crash & F.F. Procedures-0 [6] clock hours. In addition to requirements in subsection (d)(1)(J) of this section. Size up, initial attack, approach, rescue apparatus and escape areas; tactics and strategy for aircraft fires involving fixed based operations, baggage areas, stor-

age areas and terminals.

(H) Communications-0 [1] clock hour. In addition to the requirements in subsection (d)(1)(L) of this section. Radios, radio procedures governing FCC regulations, radio terminology, land signals, vehicle to tower and air communications, and communication systems.

(I)-(L) (No change.)

(M) Forcible Entry, Rope and Portable Extinguishers-10 [20] class hours. Purpose and Scope: Forcible entry practices: general building construction and forcible entry tools; opening locked doors: types, construction, locks fasteners; and techniques; opening locked windows: types, construction, locks, fasteners and techniques; opening locked windows: types, construction and forcing techniques; opening roofs types, construction, opening techniques and covers for openings; opening floors: wood floor construction and opening techniques for both wood and concrete floors; opening walls, partitions, and ceilings: construction, types, opening techniques, special operations, and government security precautions; fire service rope practices: physical characteristics, how used, tackle terms and definitions; knots and hitches: principles of typing, hoisting tools and equipment; special application and care: crowning whipping, splicing, coiling, inspection, and care; portable fire extinguishers: requirements for combustion: components of burning, fire extinguishing methods and classification of fires; classification of extinguishers: rating, selection, and distribution; using various types extinguishers; installation and inspection: marking, installing, placement and inspection.

(N) Ventilation Practices-4 [8] class hours. Ventilation applied to fire fighting: purpose and scope, responsibility of fire fighters, objectives and advantages; combustion and heat: products of combustion, smoke explosions or back drafts, transmission of heat and expansion of gasses; sizing up the situation for ventilation, situations requiring ventilation, heat conditions, fire severity, life hazard to occupants, potential hazard to fire fighters, rescue work, and evaluating the facts; top or vertical ventilation: selecting place, top ventilation procedures, and safety precautions; cross or horizontal ventilation: structural characteristics of building, exposures, hose lines, protective clothing, and breathing equipment, application of water fog as an aid and precautions; forced ventilation: advantages and disadvantages, and forced ventilation equipment; other uses for ventilation.

(O) Rescue Operations-12 [24] class hours. Purpose and scope: body protection, primary and secondary func-

tions, rescue incidents and situations; respiratory protection equipment: the respiratory tract and respiratory hazards to rescue workers; using protective breathing equipment: inspection, care and testing of equipment; other protection equipment: standards and special protective clothing, rope guide lines, radiation detection equipment, ambulance, and rescue equipment; rescue practices: knots, raising and lowering victims, rescue methods and techniques, pre-rescue planning and rescue situations.

(P) First Aid-0 [40] class hours aspects of first aid: first aid in the fire service, taking charge, general first aid procedures, and legal aspects of first aid; bleeding control, normal and induced breathing, applying mechanical resuscitation, care and cleaning equipment; oral poisoning and common emergencies, physical shock and wounds, the nervous system, openings in the skin; effects of heat and cold: burns, effects of excessive heat, effects of excessive cold; the skeletal system: bones and fractures, muscles and tendons, bandaging and transportation; moving victims: planning for transportation and preparation of the victim for transfer.

(Q) (No change.)

(2) (No change.)

(f) (No change.)

Issued in Austin, Texas, on May 13, 1988.

TRD-8804971

Ray L. Goad  
Executive Director  
Commission on Fire  
Protection Personnel  
Standards and  
Education

Effective date: May 16, 1988

Expiration date: August 14, 1988

For further information, please call: (512) 474-8066

## Chapter 237. Fire Fighters Safety Equipment

### Fire Fighters Protective Clothing

#### • §237.11

The Commission on Fire Protection Personnel Standards and Education adopts on an emergency basis, new §237.11, concerning standards for fire fighter boots, and the dates when the boots must be purchased.

Adoption of the section on an emergency basis is necessary to insure public safety for fire fighters and the general public that is protected by fire fighters.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4413(35), §2, (Recodified as the Government Code, Executive Branch, Chapter 416), which

provide the Commission on Fire Protection Personnel Standards and Education with the authority to promulgate rules and regulations necessary to carry out the provisions of the Act.

**§237.11. Fire Fighter Boots.**

(a) Fire fighter boots are defined in Texas Civil Statutes, Article 4413(35), recodified as the Government Code, Executive Branch, Chapter 416, as part of the fire fighters protective clothing.

(b) All fire fighter boots purchased by or for full-time, full-paid protection personnel after May 16, 1988, must comply with the National Fire Protection Association standards for fire fighter boots.

Issued in Austin, Texas, on May 13, 1988.

TRD-8804976

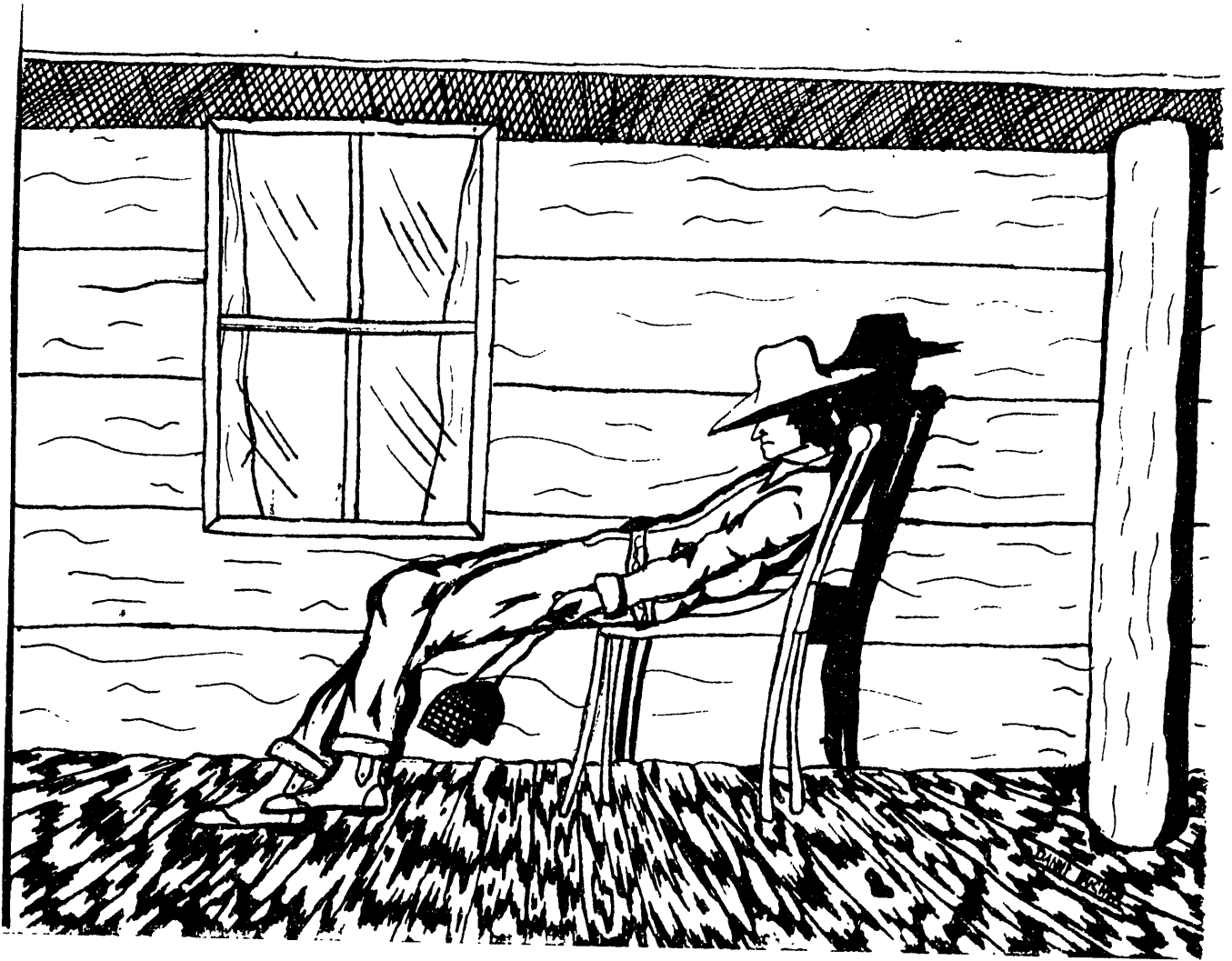
Ray L. Goad  
Executive Director  
Commission on Fire  
Protection Personnel  
Standards and  
Education

Effective date: May 16, 1988

Expiration date: August 14, 1988

For further information, please call: (512)  
474-8066





Name: Danny Bucher  
Grade: 7  
School: Clear Lake Intermediate, Clear  
Creek

# Proposed Sections

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

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

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 26. Texas Agriculture Diversification Program: Linked Deposits

##### 4 TAC §§26.1-26.12

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

The Texas Department of Agriculture proposes new §§26.1-26.12, concerning the Texas linked deposit program. The Texas Department of Agriculture proposes new sections, concerning administration of the Texas Linked Deposit Program. New §§26.1-26.12, set standards of eligibility for prospective borrowers under the program and define the application process by which loans are reviewed and certified and deposits offered to eligible institutions. These sections are proposed to define what borrowers and financial institutions must do to participate in the Texas Linked Deposit Program.

Brian Muller, economic development coordinator, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated loss in revenue of \$126,813 in 1989-1993. There will be no fiscal implications for local government.

Mr. Muller 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 expanded financing available for Texas agriculture. 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 Brian Muller, Economic Development Coordinator, P.O. Box 12847, Austin, Texas 78711.

The new sections are proposed under Texas Agriculture Code §44.007, which provides the commissioner, Texas Department of Agriculture with the authority to promulgate rules for administration of the linked deposit program established under Chapter 44.

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 May 16, 1988.

TRD-8805065 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of  
Agriculture

Earliest possible date of adoption: June 24, 1988

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 5. Job Training

##### Subchapter C. Financial Management

##### 10 TAC §5.301

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Community Affairs or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Community Affairs proposed the repeal of §5.301, concerning the financial management of the Job Training Partnership Act (JTPA) Program in Texas and the adoption for use in the program of the JTPA Financial Management Manual. This program is no longer administered by the Texas Department of Community Affairs.

Roger A. Coffield, general counsel, has determined that for the first five-year period the repealed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to individuals who are required to comply with the repealed section.

Comments on the proposal may be submitted to Roger A. Coffield, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

The repeal is proposed under Texas Civil Statutes, Article 4413(201), §4(13), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt such rules and regulations as may be necessary and proper to carry out its programs and responsibilities.

§5.301. JTPA Financial Management Man-

ual.

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 May 16, 1988.

TRD-8805022 Roger A. Coffield  
Legal Counsel  
Texas Department of  
Community Affairs

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 834-6016.

##### • 10 TAC §§5.303, 5.305, 5.307, 5.309, 5.311

*(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 Community Affairs or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Community Affairs proposes the repeal of §§5.303, 5.305, 5.307, 5.309, and 5.311, concerning the deobligation policy for unspent Job Training Partnership Act (JTPA) contract funds under Titles II and III of JTPA. The JTPA program is no longer administered by the Texas Department of Community Affairs.

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

Comments on the proposal may be submitted to Roger A. Coffield, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

The repeals are proposed under Texas Civil Statutes, Article 4413(201), §4(13), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt such rules and regulations as may be necessary and proper to carry out its programs and responsibilities.

§5.303. Deobligation/Reobligation Policy for Unspent Job Training Partnership Act Contract Funds under Titles II and III.

§5.305. Cost Limitations.

§5.307. Deobligation of Funds under Title IIA.

§5.309. Reobligation of Funds under Title IIA.

§5.311. Deobligation/Reobligation under

**Title 11B.**

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 May 16, 1988.

TRD-8805021 Roger A. Coffield  
Legal Counsel  
Texas Department of  
Community Affairs

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 834-6016.

**Chapter 7. Drug Abuse  
Prevention and Treatment**

**Subchapter A. Contract  
Administration**

**• 10 TAC §7.101**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Community Affairs or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Community Affairs proposes the repeal of §7.101, concerning the contract administration of the alcohol and drug abuse and mental health services block grant. This block grant in Title 10, Chapter 7, is no longer administered by the Texas Department of Community Affairs.

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

Mr. Coffield also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that an unnecessary and potentially confusing section of the Texas Administrative Code will be deleted. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Roger A. Coffield, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166.

The repeal is proposed under Texas Civil Statutes, Article 4413(201), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt such rules and regulations as may be necessary and proper to carry out its programs and responsibilities.

**§7.101. Cost Principles.**

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 May 16, 1988.

TRD-8805020 Roger A. Coffield  
General Counsel  
Texas Department of

**Community Affairs**

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 834-6016

**TITLE 16. ECONOMIC  
REGULATION**

**Part 1. Railroad  
Commission of Texas**

**Chapter 5. Transportation  
Division**

**Subchapter Z. Base Rates,  
Deviations, and Suspensions**

**• 16 TAC §5.582**

The Railroad Commission of Texas proposes an amendment to §5.582, concerning deviations from base rates. The amendment is proposed pursuant to a petition from Lane Freight Lines, Inc. The amendment will allow deviations of 15% on shipments of general commodities weighing less than 10,000 pounds which occupy the full visible capacity of the vehicle transporting the shipment. The amendment is proposed to allow carriers transporting truckload shipments weighing less than 10,000 pounds to apply deviations generally applicable to other truckload shipments.

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

Ronald D. Stutes, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that shipments which are treated as truckload shipments under the applicable tariffs will be subject to the same deviation provisions which are applicable to other truckload shipments. 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 Ronald D. Stutes, Hearings Examiner, Legal Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 911b, §(a)(4) and §4(a)(5), which provide the commission with the authority to allow deviations from base rates and charges.

**§5.582. Deviations from Base Rates.**

(a) (No change.)

(b) Subject to the provisions of subsection (f) of this section, motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by an amount not to exceed 5.0% above or below the applicable base rate or charge for shipments

of general commodities weighing from 501 to 9,999 pounds.

(c)-(e) (No change.)

(f) For shipments of general commodities weighing from 501-9,999 pounds which occupy the full visible capacity of the trailer, motor carriers (other than specialized motor carriers and other than contract carriers subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by the amount set out in subsection (c) of this section for shipments weighing 10,000 pounds or more.

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 May 16, 1988.

TRD-8805008 G. Gail Watkins  
Director, Legal Division  
Railroad Commission of  
Texas

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 463-6766.

**Part IV. Texas Department  
of Labor and Standards**

**Chapter 69. Manufactured  
Housing Division**

**Consumer Notice Requirements**

**• 16 TAC §69.186**

The Texas Department of Labor and Standards proposed new §69.186, concerning the posting of used manufactured homes with regard to habitability.

Harry Christensen, interim director, manufactured housing division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

The cost of compliance with the section for small businesses will be the cost of printing and labor for posting. The cost will be the same for all businesses affected by the section.

Mr. Christensen, 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 advise the consumer of the condition of manufactured homes offered for sale.

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 Harry Christensen, Interim Director, Manufactured Housing Division, P.O. Box 12157, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 5221f, which provide the



commissioner of the Texas Department of Labor and Standards with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

**§69.186. Posting Used Homes.**

(a) Any person regulated by this Act, or who maintains an inventory of used manufactured homes shall provide notice of habitability to consumers who desire to purchase a used home. Notice shall be printed with letters at least 1/2 inch in height and posted in an area where it can be seen upon entering the home. Notices shall read as follows.

(1) Homes to be refurbished.  
"This home cannot be sold for use as a residence or dwelling until state requirements for habitability are met."

(2) Homes not to be refurbished.  
"This home can only be sold for uses other than residence or dwelling and the title must be surrendered for cancellation."

(b) Posting of used homes is applicable only to those homes not meeting the habitability requirements of Texas Civil Statutes, Article 5221f, §8(c).

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 May 17, 1988.

TRD-8805026 Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 463-3128.

are in effect the public benefit anticipated as a result of enforcing the repeals will be the adoption of new sections that will increase the level of safety within the towing industry and increase assurance of recovery in the event the consumer is damaged by the industry.

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 Joseph L. Huertas, Director, Labor/Licensing and Enforcement Division, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 6687-9b, which provide the Texas Department of Labor and Standards with the authority to adopt rules regarding minimum insurance and safety standards for the operation of tow trucks.

**§80.1. Definitions.**

**§80.2. Scope.**

**§80.3. Certificate of Registration.**

**§80.4. Application Process.**

**§80.5. Registration Fees.**

**§80.6. Required Identification.**

**§80.7. Insurance Requirements.**

**§80.8. Safety Requirements.**

**§80.9. Denial; Suspension; Revocation.**

**§80.10. Notice and Hearing.**

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 May 17, 1988.

TRD-8805031 Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 463-3128.

the sections will be in effect is an estimated increase in revenue of \$800,000 in 1988, and \$350,000 annually for 1989-1992. There will be no fiscal implications for local governments.

The cost of compliance with the sections for small businesses will be a decrease in the cost involved in complying with the revised rules. It is estimated that the reduction will be in the amount of \$75 per year. There will be no cost differential between small and large businesses with regard to any of the above factors.

Joseph L. Huertas, director, labor/licensing and enforcement division, 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 an increased level of safety within the towing industry; increased assurance of recovery in the event the consumer is damaged by operation of the industry.

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 Joseph L. Huertas, Director, Labor/Licensing and Enforcement Division, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6687-9b, which provide the Texas Department of Labor and Standards with the authority to adopt rules regarding minimum insurance and safety standards for the operation of tow trucks.

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

Issued in Austin, Texas, on May 17, 1988.

TRD-8805029 Larry Kosta  
Assistant Commissioner  
Texas Department of Labor  
and Standards

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 463-3128

◆ ◆ ◆  
**Chapter 80. Tow Trucks**

◆ ◆ ◆  
**• 16 TAC §§80.1-80.10**

*(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 Labor and Standards or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)*

The Texas Department of Labor and Standards proposes the repeal of §§80.1-80.10, concerning tow trucks operated for compensation in Texas. These sections are to be repealed in order that new sections containing amended provisions may be adopted on an emergency basis.

Joseph L. Huertas, director, labor/licensing and enforcement division, has determined that for the first five-year period the proposed 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.

Mr. Huertas, also has determined that for each year of the first five years the repeals

◆ ◆ ◆  
**• 16 TAC §§80.1-80.5, 80.8-80.10**

*(Editor's Note: The Texas Department of Labor and Standards proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Department of Labor and Standards proposes new §§80.1-80.5, and 80.8-80.10, concerning tow trucks operated for compensation in Texas. These sections, which establish minimum equipment and procedures for the safe operation and prudent insuring of tow trucks operating for compensation within Texas, were written to comply with Texas Civil Statutes, Article 6687-9b.

Don Britton, supervising inspector, labor/licensing and enforcement, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the sections. The effect on state government for the first five year period

◆ ◆ ◆  
**Chapter 307. Rules of Practice and Procedure**

**Subchapter B. Adjudicate Procedures**

**General**

◆ ◆ ◆  
**• 16 TAC §307.31, §307.33**

The Texas Racing Commission proposes new §307.31 and §307.33, concerning scope and informal disposition. These sections include informal disposition of any proceeding conducted under the Rules of Practice and Procedure. All the proposed undesignated heads reflect procedures for administration of matters committed by law to the Texas Racing Commission's jurisdiction.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small

businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §307.31. *Scope.* These sections contain a set of adjudicative procedures which may be adopted and modified in other sections of this chapter for use in deciding the particular types of matters covered by those other sections.

§307.33. *Informal Disposition.* Unless precluded by law or objected to by a party, informal dispositions may be made of any proceeding conducted under these sections. Informal disposition includes disposition by stipulation, agreed settlement, consent order, and default.

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 May 17, 1988.

TRD-8805049 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## Participants

- 16 TAC §§307.41, 307.43, 307.45, 307.47

The Texas Racing Commission proposes new §§307.41, 307.43, 307.45, and 307.47, concerning classification of participants, alignment of parties, party designations and appearances, and representative appear-

ance. These sections determine how each participant is classified, aligned, and designated.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §307.41. *Classification of Participants.*

(a) Applicants, respondents, and intervenors shall be classified as parties to proceedings before the commission. A party to a proceeding has the right to present a direct case, cross examine each witness, submit legal arguments, and otherwise participate fully in the proceeding.

(b) All other participants are classified as nonparty participants. A nonparty participant may, subject to §307.45 of this title (relating to Party Designations and Appearances), present views and may, at the discretion of the examiner and subject to other rules, otherwise participate.

§307.43. *Alignment of Parties.* Each party shall be aligned according to the nature of the proceeding and the party's relationship to it.

§307.45. *Party Designations and Appearances.*

(a) The staff of the commission is always a party to a proceeding before the commission.

(b) Any person having a justifiable interest in a proceeding may be admitted as a party and may appear in the proceeding subject to the following limitations.

(1) A person seeking to appear as a party to a proceeding must file his request to be named as party at or before the conference set for designation of parties.

(2) A request to be named a party shall clearly and specifically set out:

(A) the name and address of the person making the request;

(B) the pending matter to which it pertains;

(C) the person's interest in the proceeding; and

(D) the action or outcome the person seeks.

(3) Any person seeking to appear as a party to a proceeding must give notice by serving a copy of his pleadings upon each other party to the proceeding, as required in §307.67 of this title (relating to Service of Pleadings).

(4) The examiner may require hearing participants of a similar class to select one person to represent them in a proceeding.

(c) A person not wishing to appear as a party or not entitled to be admitted as a party, but wishing to show support or opposition, may appear as a nonparty participant by giving notice to all parties in accordance with §307.79 of this title (relating to Notice of Nonparty Participants).

§307.47. *Representative Appearance.* Except when a party appears as a member of a class of affected persons, any party may represent himself or appear and be represented by any person of his choosing.

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 May 17, 1988.

TRD-8805048 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## Pleadings

- 16 TAC §§307.61, 307.63, 307.65, 307.67, 307.69, 307.71, 307.73, 307.75, 307.77, 307.79

The Texas Racing Commission proposes new sections or rules §§307.61, 307.63, 307.65, 307.67, 307.69, 307.71, 307.73, 307.75, 307.77, and 307.79, concerning classification of pleadings, form and content of pleading

filing, service of pleadings, determination of completeness of initial pleadings, exceptions to pleadings, amended pleadings, incorporated of records by reference, lost papers and records, and notice of non-party participation. These new sections propose the form and content of pleadings filed with the commission and how the commission processes each pleading.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections will be in effect. There will be no fiscal implication for state or local government or small business as a result of enforcing or administering these sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest businesses.

Ms. Fisher also has determined that for each year of the first five years, the section as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections or rules are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

**§307.61. Classification of Pleadings.** Pleadings filed with the commission include applications, answers, complaints, exceptions, replies, and motions. Regardless of error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

**§307.63. Form and Content of Pleadings.**

(a) Pleadings and briefs shall be typewritten or printed in black type on 8-1/2 inch by 11-inch white paper with one inch margins. Exhibits, unless prepared according to other commission rules pertaining to maps, plats, or the like, shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double spaced. Reproductions may be by any process, provided all copies are sharp and optically stable. The original copy of each pleading

shall be signed in ink by the pleader or his authorized representative.

(b) When official forms for commission proceedings are developed, the commission staff will furnish them on request. A pleading for which an official form has been developed must contain the information and other matter designated in that official form and must conform substantially to that official form.

(c) A pleading for which no official form is prescribed must contain:

(1) the name of the person supporting or opposing commission action;

(2) the business phone number and the address, including the city, if any, and county, of the pleader and the phone number and address of his authorized representative, if any;

(3) the jurisdiction of the commission over the subject matter;

(4) a concise statement of the facts relied upon by the pleader;

(5) a request stating the type of action or order desired by the pleader;

(6) the name and address of each person who the pleader knows or believes would be affected if the request were granted;

(7) any other matter required by statute or other commission rule; and

(8) a certificate of service, if required by §307.65 of this title (relating to Filing).

**§307.65. Filing.** An original and ten copies of each pleading must be filed with the commission staff. Each copy filed must include a certification that a copy has been served on each party of record, stating the name of each party served and the date and manner of service. If a filing fee is applicable, the filing fee must accompany the pleading.

**§307.67. Service of Pleadings.** The party filing a pleading shall mail or deliver a copy of it to every other party of record. If a party is being represented by an attorney or other representative authorized under these sections to make appearance, service must be made upon that attorney or representative, instead of upon the party. The knowing failure of a party to make this service shall be grounds for the entry of an order striking the pleading from the record.

**§307.69. Determination of Completeness of Initial Pleadings.**

(a) The commission staff shall determine the completeness of each pleading filed to initiate a proceeding within five days of its filing. If the commission staff determines that the pleading is not complete in all material respects, the commission staff shall within 10 days of the filing give notice of the specific deficiencies to the pleading party and each party, if any, upon whom the pleading party has served a copy

of the pleading. If the pleading is determined to be complete on its face, the commission staff shall within 10 days of the filing so notify the pleading party and each party, if any, upon whom the pleading party has served a copy of the pleading.

(b) No further action may be taken by the commission on a pleading filed with the commission to initiate a proceeding, nor may any time period for action other than determination of completeness and notice of completeness or deficiency begin to run until the commission staff has determined the pleading complete on its face.

**§307.71. Exceptions to Pleadings.** Any objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented no later than the prehearing conference if one is held, and no later than 15 days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file such motion or exception waives his objection.

**§307.73. Amended Pleadings.** A pleading may be amended at any time upon motion, if it does not unfairly surprise an opposing party. The examiner may allow a pleading amendment which surprises an opposing party if the examiner determines that no harm will result. A nonparty participant or intervener may at any time adopt as his pleading, by amendment, any matter proposed in another pleading.

**§307.75. Incorporation of Records by Reference.** A pleading may adopt and incorporate by specific reference any party of any document or entry in the official files and records of the commission. This section does not relieve the pleader of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

**§307.77. Lost Records and Papers.**

(a) When a paper or record in the commission's custody is lost or destroyed, the parties may, with the approval of the commission, agree in writing on a brief statement of the matters contained therein.

(b) The commission may enter an order that a copy be substituted for a lost or destroyed original paper or record if:

(1) any person makes a written, sworn motion to the commission stating the loss or destruction of such record or paper, accompanied by a certified copy of the original, if obtainable, or by a substantial copy of it, if not; and

(2) upon hearing, the commission is satisfied that it is an exact or substantial copy of the original.

(c) Such a substituted copy when filed with the commission staff as a part of the record has the force and effect of the original.

**§307.79. Notice of Nonparty Participation.**

(a) One who is not a party and who desires to support or oppose any matter

pending before the commission shall file his written statement with the commission at least 15 days before the hearing date. At the time of filing, he shall serve a copy on each designated party and file proof of service with the commission. The commission may authorize late filing on a showing of good cause and extenuating circumstances. Such a statement must:

- (1) show the name and address of the nonparty participant;
- (2) identify the pending matter to which it pertains;
- (3) state the basis of participant's interest and allege any relevant facts and conclusions;
- (4) propose any amendment or adjustment to the application which, if made, would result in withdrawal of the statement.

(b) A nonparty statement may be dismissed if it does not substantially comply with this section.

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 May 17, 1988.

TRD-8805047 Nancy Fisher  
Deputy  
The Texas Racing  
Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## Docketing and Notice

- 16 TAC §§307.91, 307.93, 307.95, 307.97, 307.99, 307.101, 306.103, 307.105

The Texas Racing Commission proposes new §§307.91, 307.93, 307.95, 307.97, 307.99, 307.101, 307.103, and 307.105, concerning docketing and numbering causes, notice and hearing and call for participation, revised notice, written motions, prefilings prepared testimony and exhibits, examiner, designation and use of hearings examiners, and qualifications of hearings examiners. These sections propose how the commission docket an application or pleading and how and when the hearing is posted. The section provides for written notices and prefilings prepared testimony and exhibits. A hearing examiner or one or more members of the commission are allowed to conduct hearings and prehearing proceedings.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections will be in effect. There will be no fiscal implication for state or local government or small business as a result of enforcing or administering these sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the

normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest businesses.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §307.91. *Docketing and Numbering Causes.*

(a) When an application or pleading intended to institute a proceeding has been received by the commission staff and has been preliminarily determined complete, the commission staff shall docket the matter as a pending proceeding, number it in accordance with the established docket numbering system of the commission, assign an examiner (unless the matter is to be heard originally by the commission), issue a call for participants, and see that the commission's responsibility to give notice of the application or pleading is met.

(b) The commission may institute a proceeding on its own motion by causing the attorney general, or his designee, as the general counsel of the Texas Racing Commission, to file an appropriate pleading with the commission staff. §307.93. *Notice of Hearing and Call for Participants.*

(a) Within five days after determining an application (or other pleading intended to initiate a proceeding) complete, the commission shall submit for publication in the Register, notice of a hearing on the application and a call for participants in the hearing.

(b) The notice of hearing and call for participants shall be given in an issue of the Register dated not fewer than 15 days before the date of the conference at which parties are to be designated.

(c) The hearing on the application shall be held no sooner than 15 days after the conference at which parties are designated.

(d) The notice of hearing and call for participants shall include the following:

(1) a statement of the date, time, and place of the conference at which parties to the proceeding will be designated and a statement of the date, time, and place of the hearing on the application;

(2) a short, plain statement of the matters asserted by the application, the geographic area to which the application pertains, the commission action which is sought, and the telephone number and address of a commission employee who may be consulted for further information on the application;

(3) a statement of the legal authority and jurisdiction of the commission to entertain the application;

(4) a statement that to become a party in the proceeding one must be so designated by the commission, and that a person wishing to be so designated must present a written request to that effect in the proper form to the commission at or before the conference held by the commission for that purpose;

(5) a statement that limited non-party participation may be allowed under other commission rules.

(e) The commission shall maintain a mailing list of all persons who request personal notice of public hearing or other proceedings of the commission. The commission shall mail notice of each proceeding to each person on such list at the address provided to the commission. The annual renewal of each such request is a condition of continuing each name and address on the mailing list. This notice requirement stands in addition to any others required by law or rules of the commission. §307.95. *Revised Notice.* If the commission determines that a material error has been made in a notice, or that a material change has been made in an application after notice has been issued, the commission shall issue a revised notice. If the material change or error affecting the content of the notice does not come to the attention of the commission in sufficient time to correct notice given by newspaper publication, the commission will adjust the time limitation provided in its rules, and will reschedule the hearing if necessary. The party who has caused the change or error requiring revised notice shall bear the expense of giving such notice.

§307.97. *Written Motions.* Any motion relating to a pending proceeding shall, unless made during a prehearing conference or a hearing, be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by affidavit. Each written motion shall be filed with the examiner or the commission staff, as appropriate.

§307.99. *Prefiling Prepared Testimony and Exhibits.*

(a) Prepared testimony consists of any document which is intended to be of-

ferred as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation.

(b) A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the commission staff not more than eight nor less than five days prior to the hearing for consideration and review by the general counsel or examiner prior to the hearing, and shall serve a copy of the prepared testimony on each other party to the proceeding and each other person who has filed a nonparty statement or written request to receive such testimony. The commission staff or examiner may authorize the late filing of prepared testimony upon a showing of good cause and extenuating circumstances.

(c) To receive a copy of prepared testimony submitted in compliance with this section a person who is not a party must bear the reasonable expense of the copies sought and the person must file a written statement in compliance with §307.79 of this title (relating to Notice of Nonparty Participation), or file a written request with the commission staff not less than 15 days prior to the hearing. A person is not made a party to a proceeding by the filing of such a statement or request.

**§307.101. Examiner.**

(a) Hearings and prehearing proceedings may be conducted by one or more members of the commission or a hearing examiner. In a hearing conducted by one or more members of the commission, the commissioner or his designee shall serve as presiding examiner. In a hearing conducted by a hearing examiner, the hearing examiner is presiding examiner. The presiding examiner's authority includes all authority which may be delegated to a hearing examiner.

(b) The presiding examiner has authority to admit parties, authorize the taking of depositions, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, administer oaths, receive evidence, rule on the admissibility of evidence and amendments to pleadings, examine witnesses, set reasonable times within which a party may present evidence and within which a witness may testify, permit and limit oral argument, issue interim orders, recess a hearing from day to day and place to place, propose findings of fact and conclusions of law, propose orders and decisions, and do all other things necessary to a fair and proper hearing.

(c) If the commission for any reason removes a hearing examiner or if an examiner is unable to continue presiding at any time before final decision, the commission may appoint another examiner to preside and to perform any function remaining to be performed, without the necessity of repeating any previous proceeding.

**§307.103. Designation and Use of Hearing**

**Examiners.**

(a) The commission delegates to the chairman authority to designate which, if any, of the proceedings docketed for hearing shall be heard originally by a hearing examiner rather than by the commission.

(b) Each docketed proceeding shall be routinely set for original hearing by the commission unless within five days of docketing a proceeding, the chairman directs the commission staff to set the proceeding for original hearing by a hearing examiner.

(c) The commission may designate special hearing examiners on a temporary basis to hear complex proceedings, to assist in training hearing examiners, or to expedite clearing the commission's docket.

**§307.105. Qualifications of Hearing Examiners.**

(a) Each hearing examiner must be an attorney licensed to practice before the Supreme Court of the State of Texas.

(b) No person who has participated in a matter in any capacity other than that of hearing examiner for the commission may serve as a hearing examiner in the same matter.

(c) No person may serve as hearing examiner in a matter in the outcome of which he has an economic interest. A person is deemed to have an economic interest in a matter if he, or any of his immediate family, dependents, business partners, or clients have an economic interest in a matter. A person is deemed to have an economic interest in a matter if he or his immediate family or dependents separately or together hold any office in or own 1.0% or more of the stock of any business or professional corporation or association having an economic interest in a matter.

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 May 17, 1988.

TRD-8805046

Nancy Fisher  
Deputy  
The Texas Racing  
Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223

◆ ◆ ◆  
**Prehearing Proceeding**

**• 16 TAC §307.121, §307.123**

The Texas Racing Commission proposes new §307.121 and §307.123, concerning prehearing conference and motion to consolidate. These new sections reflect motions to allow a prehearing conference or to allow consolidating two or more applications or other proceedings.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

**§307.121. Prehearing Conference.**

(a) Upon written notice, the examiner assigned to a proceeding may, on the examiner's own motion or on the motion of a party, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

- (1) simplifying issues;
- (2) amending the pleadings;
- (3) making admissions of fact or stipulations to avoid the unnecessary introduction of proof;
- (4) designating parties;
- (5) setting the order of procedure at a hearing;
- (6) identifying and limiting the number of witnesses; and
- (7) resolving other matters which may expedite or simplify the disposition of the controversy, including settling issues in dispute.

(b) The examiner shall record the action taken at the conference unless the parties enter into a written agreement as to such action, as permitted in §307.9 of this title (relating to Agreements To Be in Writing).

(c) The examiner conducting a prehearing conference may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry. §307.123. *Motion to Consolidate.*

(a) A party may move to consolidate two or more applications or other proceedings. A motion to consolidate must be in writing, signed by the movant or his representative, and filed with the commission prior to the date set for hearing.

(b) The commission may not consolidate proceedings or hear them jointly without the consent of all parties to each affected proceeding, unless the commission finds both:

(1) that the proceedings involve common questions of law or fact; and

(2) that separate hearings would result in unwarranted expense, delay, or substantial injustice. The commission may hold special hearings on separate issues.

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 May 17, 1988.

TRD-8805045

Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## Hearings

### • 16 TAC §§307.131, 307.133, 307.135, 307.137, 307.139

The Texas Racing Commission proposes new §§307.131, 307.133, 307.135, 307.137, and 307.139, concerning place and nature of hearings, postponement and continuance, order of procedure, reporters and transcripts, and the record. These new sections propose the location where each hearing will be held and the manner a hearing may be postponed or a continuance granted. The section provides for orderly and efficient procedures for the conduct of hearings and reflects what is included in the record.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest

business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.131. *Place and Nature of Hearings.* All hearings in every proceeding must be open to the public. Each hearing shall be held in Austin, unless the law requires otherwise, or unless, for good cause stated in its minutes, the commission designates another place.

§307.133. *Postponement and Continuance.*

(a) A motion for postponement must be in writing, must set forth the specific grounds on which it is sought, and must be filed with the commission before the date set for hearing. If the examiner grants a motion for postponement, notice of postponement must issue.

(b) After a matter has proceeded to a hearing, the presiding examiner may grant a continuance on either an oral or a written motion, without issuing new notice, by announcing at the hearing before recessing it the date, time, and place for the hearing to reconvene. If the examiner continues a hearing without publicly announcing at the recessed hearing the date, time, and place for its reconvening, the commission must mail notice at least 10 days before the further setting to parties present at the hearing and to all other persons who the commission has reason to believe should be notified.

§307.135. *Order of Procedure.*

(a) The presiding examiner shall open the hearing, make a concise statement of its scope and purposes, and announce that a record of the hearing is being made.

(b) Once the hearing has begun, parties or their representative may be off the record only when the examiner permits. If a discussion off the record is pertinent, the presiding examiner will summarize the discussion for the record.

(c) All appearances by parties and their representatives and by persons who may testify must be entered on the record.

(d) The examiner shall then receive motions and afford each party of record an

opportunity to make an opening statement.

(e) Each party of record is entitled to present a direct case and to cross examine opposition witnesses. The party with the burden of proof, usually the applicant, is entitled to open and close, except that if the proceeding has been initiated by the commission or if several proceedings are heard on a consolidated record, the presiding examiner shall designate who may open and close and at what stage intervenors may offer evidence.

(f) All witnesses to be called shall be sworn, and after opening statements, if any, the party with the burden of such other party as the presiding examiner has designated under the preceding paragraph may proceed with his direct case. Opposing parties may cross examine witnesses.

(g) All other parties may then present their cases and be subjected to cross examination. Unless the order of their presentations has already been agreed on, the presiding examiner may entertain motions from the parties on order of procedure and shall determine how best to proceed.

(h) The presiding examiner may allow nonparty participants to cross examine parties and witnesses when it appeared this may lead to significantly fuller disclosure of facts without unduly delaying the hearing or burdening the record.

(i) At the conclusion of all evidence and cross examination, the presiding examiner shall allow closing statements.

(j) Before writing his report and proposal for decision, the presiding examiner may call upon any party for further relevant and material evidence on any issue. The presiding examiner shall not consider such evidence or allow it into the record without giving each party an opportunity to inspect and rebut it.

(k) Upon written notice or notice stated into the record, the presiding examiner may direct the parties or their representatives to appear for a conference to consider any matter which may expedite the hearing and serve the interests of justice. The action taken at the conference must be reduced to writing, and the writing shall be signed by the parties and made part of the record in the proceeding.

§307.137. *Reporters and Transcripts.*

(a) If necessary or requested, the commission shall engage an official reporter or make a stenographic record of the hearing and to file it with the commission. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a transcript of the stenographic record is requested, the commission may assess costs of preparing such a transcript to the requesting party or person.

(c) A participant may challenge errors made in transcribing a hearing by not-

ing them in writing and suggesting corrections within 10 days after the transcript is filed, or later if the examiner permits. The participant claiming errors shall serve a copy of his suggested corrections upon each party of record, the official reporter, and the examiner. If proposed corrections are not objected to within 12 days after being offered, the presiding examiner may direct that the suggested corrections be made and the manner of making them. If parties disagree on suggested corrections, the presiding examiner, with the aid of argument and testimony from the parties, shall determine whether to change the record, and if so, how.

**§307.139. The Record.** The record in an adjudicative hearing includes:

- (1) all pleadings, motions, intermediate rulings, and interim orders;
- (2) all evidence received or considered;
- (3) a statement of all matters officially noticed;
- (4) questions, offers of proof, objections, and rulings on objections;
- (5) proposed findings and exceptions;
- (6) any proposal for decision, opinion, or report by the examiner conducting the hearing;
- (7) all memoranda and data submitted by staff to the examiner or the commission, or considered by the examiner or the commission in connection with the proceeding; and
- (8) summaries of any conferences held before or during the hearing.

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 May 17, 1988.

TRD-8805050 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## Evidence

- 16 TAC §§307.151, 307.153, 307.155, 307.157, 307.159, 307.161, 307.163, 307.165, 307.167, 307.169, 307.171, 307.173, 307.175

The Texas Racing Commission proposes new §§307.151, 307.153, 307.155, 307.157, 307.159, 307.161, 307.163, 307.165, 307.167, 307.169, 307.171, 307.173, and §307.175, concerning witnesses to be sworn, witnesses limited, rules of evidence, formal exceptions, offer of proof, official notice, doc-

umentary evidence, admissibility of prepared testimony and exhibits, exhibits, subpoenas, depositions, interim orders, and briefs. These proposed sections provide for all testimony to be given under oath and a limitation on the number of witnesses. Orderly and efficient procedures for evidence are also included.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implication for state or local government or small business as a result of enforcing or administering these sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay. At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest businesses.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provides the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

**§307.151. Witnesses to be Sworn.** All testimony shall be given under oath administered by the presiding examiner.

**§307.153. Witnesses Limited.** The examiner may limit the number of witnesses whose testimony is merely cumulative.

**§307.155. Rules of Evidence.**

(a) The examiner shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The presiding examiner shall follow the rules of evidence as applied in nonjury civil cases in Texas district courts. When necessary to ascertain facts not reasonably susceptible of proof under those rules, the presiding examiner may admit evidence not admissible under them (unless precluded by statute) if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by Texas law shall be applied in commission proceedings.

(c) A party may object to an evidentiary offer and his objection shall be noted in the record.

(d) No evidence which is beyond

the scope of the allegations in a proceeding may be admitted.

**§307.157. Formal Exceptions.** Formal exceptions to rulings of the presiding examiner during a hearing are unnecessary. It is sufficient that the party, at the time a ruling is made or sought, makes known to the presiding examiner the action which he desires.

**§307.159. Offer of Proof.**

(a) When the presiding examiner rules to exclude evidence, the party offering it may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. That offer of proof suffices to preserve the point for review by the commission.

(b) The presiding examiner may ask a witness or offered witness those questions he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof.

(c) An alleged error in sustaining an objection to questions asked on cross examination may be preserved without making an offer of proof.

**§307.161. Official Notice.**

(a) The commission may take official notice of judicially cognizable facts and of facts generally recognized within the area of the commission's specialized knowledge.

(b) Parties shall be notified before final decision of the specific facts noticed, including any facts or other data in staff memoranda, and they shall be afforded an opportunity to contest the material so noticed.

(c) The special skills and knowledge of the commission and its staff may be utilized in evaluating the evidence.

**§307.163. Documentary Evidence.**

(a) The presiding examiner may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original when possible.

(b) When many similar documents are offered, the examiner may limit those admitted to a number which are representative, and many require that the relevant data be abstracted from the documents and presented as an exhibit. When so requiring, the examiner shall give all parties or their representatives an opportunity to examine the documents from which the abstracts are made.

**§307.165. Admissibility of Prepared Testimony and Exhibits.** When it will expedite a hearing without substantially prejudicing the interests of a party, the examiner may receive evidence in written form. The prepared, written testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated into the record as if read or received

as an exhibit, upon the witness being sworn and identifying the writing as a true and accurate record of what his testimony would be if they were to testify orally. The witness is subject to clarifying questions and to cross examination in accordance with 307.135 of this title (relating to Order of Procedure), and his prepared testimony is subject to a motion to strike either in whole or in part.

**§307.167. Exhibits.**

(a) **Form of Exhibits.** Documentary exhibits must be of a size which will not unduly encumber the records. Whenever practicable, exhibits must conform to the requirements of §307.63 of this title (relating to Form and Content of Pleadings). The first sheet of the exhibit must briefly state what the exhibit purports to show. Exhibits may include only facts material and be relevant to the issues of the proceeding. Maps or drawings must be so rolled or folded as not to encumber the record. Exhibits not conforming to this section may be excluded.

(b) **Tender and Service.** The offering party shall tender to the examiner for identification the original of each exhibit offered. The offering party shall furnish one copy to the examiner and one copy to each party of record or his representative. Documents and maps received in evidence may not be withdrawn except with the approval of the presiding examiner.

(c) **Excluded Exhibits.** If an exhibit has been offered, objected to, and excluded, the presiding examiner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be numbered for identification, endorsed by the presiding examiner with his ruling, and included in the record to preserve the exception.

(d) **Late Exhibits.** A party may not file an exhibit after the hearing closes, unless the examiner specifically directs, in which event the party shall, before filing the exhibit, serve a copy of it on all other parties.

**§307.169. Subpoenas.**

(a) Following written request by a party, or on its own motion, the commission may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. A commission member or a hearing examiner may issue a subpoena in the name of the commission.

(b) A motion for a subpoena to compel the production of books, records, papers, or other objects shall be addressed to the appropriate person, shall be verified and shall specify as nearly as may be the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

(c) The party requesting a subpoena shall deposit with the commission a sum sufficient to insure payment of the witness, reasonable and necessary travel expenses, and the necessary witness fee.

**§307.171. Depositions.** The Administrative Procedure and Texas Register Act, §14, governs the taking and use of depositions. The Texas Rules of Civil Procedure, Rule 169, governs for admissions of fact and genuineness of documents.

**§307.173. Interim Orders.** Prior to a final order of the commission, a party may seek from a presiding examiner relief by a written interim order. An interim order is not subject to exceptions or motion for rehearing, but a party aggrieved by an interim order may file an appeal from the presiding examiner's ruling to the commission within three days of the issuance of the order. The commission shall rule on the interim order at its next meeting, and pending ruling thereon, the interim order is stayed.

**§307.175. Briefs.**

(a) Briefs must conform, where practicable, to the requirements for formal pleadings set out in these sections. The points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be concisely and logically organized and directed to each point.

(b) The examiner may request briefs before or after he files the examiner's report and proposal for decision required in §307.191 of this title (relating to Proposal for Decision and Examiner's Report).

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 May 17, 1988.

TRD-8805051

Nancy Fisher  
Deputy  
The Texas Racing  
Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223

◆ ◆ ◆  
**Proposal for Decision;  
Examiner's Report**

- 16 TAC §§307.191, 307.193,  
307.195, 307.197, 307.199,  
307.201

The Texas Racing Commission proposes new §§307.191, 307.193, 307.195, 307.197, 307.199, and 307.201, concerning proposal for decision and examiner's report, counter-signature by attorney general or his designee, filing of exceptions and reply, form of exceptions and replies, oral argument before the commission, and pleading before final decision. These new sections concern both adverse and nonadverse proposals for decisions and the examiner's report. Provisions for exceptions and replies are also in-

cluded. Before final commission determination, oral arguments and the filing of briefs and proposed finding of fact may be allowed.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

**§307.191. Proposal for Decision and Examiner's Report.**

(a) **Decision Not Adverse to a Party.** If a majority of the commission has neither heard nor read the record of a proceeding, and if the proposed decision is not adverse to any party to the proceeding, the examiner may propose to the commission a decision which need not contain findings of fact or conclusions of law.

(b) **Decision Adverse To A Party.**

(1) If a majority of the commission has neither heard the case nor read the record of a proceeding, the commission may not make a decision adverse to a party until a proposal for decision has been served on the parties, and an opportunity has been given each party adversely affected, to file exceptions and present briefs to the commission.

(2) The proposal for decision, if adverse to a party, must be prepared by the examiner or by one who has read the record, and must contain a statement of the reasons for the proposed decision and a statement of each finding of fact and conclusion of a law necessary to the proposed



decision. The examiner may request that any party draft and submit a proposal for decision including proposed findings of fact and conclusions of law separately stated. In making such a request, the examiner will indicate to all parties the general nature of the intended proposal for final decision to be drafted. When the presiding examiner wishes to use the special skills of the commission staff in evaluating the evidence received or record made, he may request in writing to the commission the assignment of appropriate personnel who have not participated in the review or processing of the matter. The presiding examiner may communicate with any commission employee assigned under this section.

(3) The proposal for decision shall be circulated among the parties. If any party files an exception or presents a brief, an opportunity must be afforded to all other parties to file replies to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(c) Report Required. Regardless of whether subsection (a) or subsection (b) of this section if followed, the proposal for decision must be accompanied by an examiner's report. This report must contain a statement of the nature of the case and a discussion of the issues, the evidence, and the applicable law.

§307.193. *Countersignature by Attorney General or His Designee.* The attorney general or his designee shall countersign every examiner's report and proposal for decision.

§307.195. *Filing of Exceptions and Replies.*

(a) Unless the examiner has set a different period of time, a party may file exceptions to the examiner's report or the proposal for decision or both within 15 days after the examiner's report and proposal for decision are served.

(b) A party may file replies to these exceptions within 15 days after the exceptions are filed unless the examiner has set a different period of time.

(c) Any request to enlarge or shorten the time for filing exceptions or replies must be filed with the examiner and a copy served on all parties by the requesting party. The examiner shall promptly notify the parties of his decision on the request. Additional time may be allowed only when the interests of justice require.

§307.197. *Forms of Exceptions and Replies.* Exceptions and replies to exception shall conform as nearly as practicable to the rules for pleadings. Specific exception shall be concisely stated. The evidence relied on shall be pointed out with particularity, and that evidence and any arguments relied on shall be grouped under the exceptions to which they relate.

§307.199. *Oral Argument Before the Commission.* A party may request and the commission may allow oral argument before the commission, before final commis-

sion determination. A request for oral argument may be incorporated in the exceptions, in a reply to exceptions, or in a separate pleading.

§307.201. *Pleading Before Final Decision.* The commission may permit or request parties to file briefs and proposed findings of fact within such time after the hearing and before final decision as the commission may specify. A party doing so shall file an original and 10 copies with the commission and serve a copy on each other party, certifying to the commission that such service has been made.

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 May 17, 1988.

TRD-8805052 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

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**Orders**

• 16 TAC §§307.211, 307.213,  
307.215, 307.217

The Texas Racing Commission proposes new §§307.211, 307.213, 307.215, and 307.217, concerning final decision or order, form, content, and service, effective date of decision or order, and administrative finality. After all documents are filed, these new sections allow the commission to render a final decision or issue its final order within a certain time, and effective date of the decision or order is then established. Section 307.217 is a set of regulations providing that the commission action is final.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.211. *Final Decision or Order.* After the time for filing exceptions and replies to exceptions has expired, or when all timely exceptions and replies to exceptions have actually been filed, the commission shall consider the examiner's report and the proposal for decision. The commission may adopt the proposal for decision, modify and adopt it, reject it and issue a commission decision, or remand the matter to the examiner. The commission shall render its final decision or issue its final order within 60 days after the hearing closes, except in a contested case not heard by a majority of the commission. The commission may prescribe a time up to 120 days after the close of the hearing within which it will render its final decision or issue its final order. Any such extension must be announced at the conclusion of the hearing.

§307.213. *Form, Content, and Service.* A final decision or order of the commission adverse to one or more parties must be written and signed by at least four commission members. Such final decision must include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits proposed findings of fact, the decision must include a ruling on each proposed finding. The commission staff shall mail or deliver a copy of the decision or order to each party or his authorized representative.

§307.215. *Effective Date of Decision or Order.* A final decision or final order is effective on the date of commission action, unless otherwise stated in the decision or order. The date of commission action must be incorporated in the body of each final decision and order.

§307.217. *Administrative Finality.*

(a) Commission action is final and not appealable on the 16th day after it is issued, when the applicant or parties fail to file a motion for rehearing within 15 days after the order is issued, the final decision or order will expire without being filed.

(b) Commission action is final and appealable when:

(1) the commission denies a motion for rehearing on a final decision or order, either expressly or by operation of law; or

(2) the commission renders a final decision or issues a final order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, or welfare requires immediate effect be given to the decision order.

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 May 17, 1988.

TRD-8805053 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

### Ancillary Proceedings and Proceedings Beyond Order

#### • 16 TAC §§307.231, 307.233, 307.235, 307.237

The Texas Racing Commission proposes new §§307.231, 307.233, 307.235, and 307.237, concerning rehearing, emergency orders, show cause orders and complaints, and ex parte communications. These are new sections of proposed rules for ancillary proceedings and proceedings beyond order, which provide for rehearings, emergency orders, show cause orders, and complaints.

Nancy Fisher, deputy, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since these sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the commission is a new state agency, we do anticipate the normal costs associated with setting up the agency, including but not limited to hiring necessary employees and purchasing required capital outlay.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with the largest business.

Ms. Fisher 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 a uniformity in the hearing process before the commission. The proposed sections will allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the au-

thority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §307.231. *Rehearing.*

(a) A motion for rehearing is prerequisite to appeal, except as provided in §307.217 of this title (relating to Administrative Finality). A motion for rehearing must be made within 15 days after the final decision or order. Any reply to a motion for rehearing must be filed with the commission within 25 days after the final decision or order. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party concurrently with the filing.

(b) The commission shall act on the motion within 45 days after the final decision or order. If the commission does not act within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the final decision or order.

(c) The commission may by written order extend the time for filing motions and replies and for taking commission action, except that this extension may not extend the period for commission action beyond 90 days after the date of the final decision or order. In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days from the date of the final decision or order.

§307.233. *Emergency Orders.* If the commission finds that an imminent peril to the public health, safety, or welfare requires the immediate finality of a decision or order in a contested case, it shall recite that finding in the decision or order in addition to reciting that the decision or order is final from the date rendered, in which even the decision or order is final and appealable from the date rendered and a motion for rehearing is not prerequisite to appeal.

§307.235. *Show Cause Orders and Complaints.* The commission, either upon its own motion or upon receipt of written complaint, may, at any time after notice to all interested persons, cite any person within its jurisdiction to appear before it in a public hearing and require that person to show cause why he should not comply with a rule, regulation, agreement, general order or statute committed to the commission's administration which that person is allegedly violating.

§307.237. *Ex Parte Communications.* Except as provided in §307.191 of this title (relating to Proposal for Decision and Examiner's Report), and unless required for the disposition of ex parte matters authorized by law, no member of the commission and no employee of the commission assigned to propose a decision or assigned to propose or make findings of fact or conclusions of law in a case covered by these sections may communicate, directly or indirectly, in connection with any issue of fact or law with any person or party or any representative of either, except on

notice and opportunity for all parties to participate.

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 May 17, 1988.

TRD-8805054 Nancy Fisher  
Deputy  
Texas Racing Commission

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 476-7223.

## TITLE 25. HEALTH SERVICES

### Part II. Texas Department of Mental Health and Mental Retardation

#### Chapter 401. Systems Administration

##### Subchapter B. Interagency Agreements

#### • 25 TAC §§401.41-401.44, 401.61

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.41-401.44 and 401.61, concerning interagency agreements. j

The new sections provide a means by which legislatively mandated agreements between TDMHMR and other state agencies may be published for public review and comments and adopted in rule form.

Section 401.44 adopts by reference a memorandum of understanding (MOU) between TDMHMR, the Texas Department of Health (TDH), and the Texas Department of Human Services (TDHS) concerning hospitals and long-term care facilities. The section is proposed in order to comply with the provisions of the Human Resources Code, Texas Codes Annotated, §22.014, which requires the agencies to adopt the MOU by rule. The MOU discusses the responsibilities, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long-term care facilities. It does not apply to state hospitals or to any TDMHMR service not funded under Title XIX of the US Social Security Act.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal cost to state or local government or small businesses as a result of administering the sections as proposed.

Ms. Dillard has also determined that the public benefit is the provision of public notice concerning interagency agreements affecting services to Texas citizens.

Comments on the proposal may be submitted to Linda Logan, rules coordinator, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication. j

The new sections are proposed under Texas

Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§401.41. Purpose.** The purpose of this subchapter is to provide public notice of legislatively mandated memoranda of understanding and other agreements between the Texas Department of Mental Health and Mental Retardation (TDMHMR) and other state agencies.

**§401.42. Application.** This subchapter applies to the facilities of the Texas Department of Mental Health and Mental Retardation, including the Central Office, and to community mental health and mental retardation centers, as defined in each memorandum of understanding.

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

Community center—A community mental health and mental retardation center organized pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq., as amended.

TCADA—Texas Commission on Alcoholism and Drug Abuse.

TDC—Texas Department of Corrections.

TDH—Texas Department of Health.

TDHS—Texas Department of Human Services.

TDMHMR—Texas Department of Mental Health and Mental Retardation.

TEA—Texas Education Agency.

TRC—Texas Rehabilitation Commission.

TSBP—Texas State Board of Pharmacy.

**§401.44. Memorandum of Understanding: Provision, Regulation, and Funding of Services in Hospitals and Long-Term Care Facilities.**

(a) TDMHMR adopts by reference as Exhibit A a joint memorandum of understanding with TDHS and TDH concerning responsibility, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long-term care facilities.

(b) Copies of this memorandum of understanding are filed in the Office of Standards and Quality Assurance, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

**§401.61. Distribution.** The provisions of

this subchapter shall be distributed to the members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy and assistant deputy commissioners, and directors of Central Office; superintendents/directors of all TDMHMR facilities; executive directors of all community mental health and mental retardation centers; and commissioners and directors of agencies herein named as parties to the joint memoranda.

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 May 17, 1988.

TRD-8805010

Patilou Dawkins  
Chairman, Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: June 24, 1988.

For further information, please call: (512) 465-4670

## Chapter 405. Client (Patient) Care

### Subchapter C. Life - Sustaining Treatment

#### • 25 TAC §§405.51 - 405.62

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new Chapter 405, Subchapter C, concerning life-sustaining treatment for clients of TDMHMR facilities.

The new sections were developed in recognition that TDMHMR clients deserve the same level of thoughtful terminal care that is given to non-institutionalized persons. The sections are the product of a work group of distinguished professionals from within TDMHMR and the community representing fields of ethics, religion, medicine, and law. The sections proposed are based on similar guidelines commonly utilized in community hospitals for many years and which were recently refined by the American Medical Association Task Force on Resuscitation Criteria.

Given the necessity for proposing the new subchapter to enable its timely adoption and the desirability of involving the members of the task force in responding to comment, the remarks of staff and advocacy organizations solicited prior to the proposal of the new sections will be considered by the task force at the same time that comment from the public at large is reviewed.

The principal concern expressed by prepublication reviewers related to the size and composition of the ethics committee. The following members of the task force are available to discuss the concerns of the public with regard to the ethics committee and may be contacted through the Office of Medical Services, Texas Department of Mental Health and Mental Retardation, at (512) 465-4667:

Earl B. Matthew, M.D., director of Medical Services and Education, Central Texas Medical Foundation, and consultant, TDMHMR; M. Lynn Crismon, Pharm. D., assistant professor, College of Pharmacy, University of Texas at Austin, and consultant in clinical pharmacology, TDMHMR; J. Russell Hoverman, M.D., medical oncologist and medical ethicist; Reverend Charles Meyer, vice president for Patient Services and director of Pastoral Care, St. David's Community Hospital, Austin; Jaime Osorio, M.D., general surgeon and director of the Medical Unit at Wichita Falls State Hospital; Jorge Saravia, M.D., pediatric neurologist and faculty member at the University of Texas Health Sciences Center, San Antonio, and member of the Medical Advisory Committee to the Texas Board of MHMR; and Victor Vadney, M.D., a family practitioner and medical director, Abilene State School, Abilene.

The proposed new subchapter complies with the requirements of the Joint Commission on Accreditation of Healthcare Organizations for a categorization plan for terminally ill patients. It also implements the Texas Natural Death Act, Texas Civil Statutes, Article 4590h, as it applies in situations occurring in the TDMHMR client population.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal cost to state or local government or small businesses as a result of administering the sections as proposed.

Ms. Dillard has also determined that the public benefit is the assurance that TDMHMR clients are afforded that same considerations with regard to terminal care as are other citizens.

There is no anticipated economic cost to individuals required to comply with the sections as proposed.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

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

**§405.51. Purpose.** The purpose of this subchapter is to provide procedures for delineating the treatment and resuscitative status of clients and for implementing the Texas Natural Death Act, Texas Civil Statutes, Article 4590h, which provide statutory authority for decisionmaking with regard to withholding or withdrawal of life-sustaining treatment.

**§405.52. Application.** This subchapter applies to all facilities of the Texas Department of Mental Health and Mental Retardation.

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

Client—A person receiving residential services from a facility of the Texas Department of Mental Health and Mental Retardation.

**Directive**—Written or oral expression by a competent adult of his or her desires regarding life-sustaining treatment in the event of an occurrence of a terminal condition as certified by two physicians, one of whom is the attending physician, which meets the legal requirements of the Texas Natural Death Act.†

**Facility**—Any state hospital, state school for persons with mental retardation, state center, or other institution of the Texas Department of Mental Health and Mental Retardation, and any organizational entity that hereafter may be made a part of the department.

**Family**—The client's spouse, reasonably available adult children, parent(s), siblings, and nearest relative.

**Legal guardian**—The person who, under court order, is the guardian of the person of the client.†

**Life-sustaining treatment**—A medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function.

**Qualified client**—A client diagnosed and certified in writing to have a terminal condition by two physicians, one of whom is the attending physician, and both of whom have personally examined the client.†

**Resuscitation**—Act of reviving from apparent death or unconsciousness.

**Resuscitative status categories** — Categories of intervention for clients, as follows:

(1) **Category I: Maximum therapeutic effort**—Intervention in which everything necessary will be done to reduce mortality and morbidity, including transfer to another medical facility for additional services;

(2) **Category II: Therapeutic effort with no heroics**—Intervention in which conservative therapeutic and supportive measures will be performed to reduce mortality and morbidity, excluding initiation of endotracheal intubation and external cardiac massage. Defibrillation, surgical intervention, hyperalimentation, or implementation of other measures deemed extraordinary may be restricted or excluded; and

(3) **Category III: Palliative measures only**—Intervention in which measures directed toward reducing pain and enhancing the client's comfort and dignity will be maintained. However, no resuscitative measures will be performed.

**Terminal condition**—An incurable condition caused by injury, disease, or illness which, regardless of the applica-

tion of life-sustaining procedures, would, within reasonable medical judgment, produce death, and for which the application of life sustaining procedures would serve only to postpone the moment of death of the client.

**§405.54. Resuscitative Status Policy.**

(a) The resuscitative status of a client is an integral part of the overall evaluation of the client's medical care. An order not to resuscitate (Category II or III) should be based on a judgment that resuscitation is an ethically extraordinary and non-obligatory procedure for prolonging the life of the client. Such an order would be most appropriate when the client is terminally ill and resuscitation would only prolong the dying process.

(b) Resuscitative status should be discussed with the client (or legal guardian) and his or her family in advance of a medical emergency. When a determination of that status is being made by the client (or legal guardian), family, and physician, the following considerations are recommended.

(1) The competent client must be allowed the right to consensual partnership in the determination of resuscitative status. If the client is incompetent, comatose, or incapable of communication, the decision should be made with the consultation and consent of the client's legal guardian and family. Because the client's wishes, if known, are to be honored, an expression of those wishes made when the client was competent and capable of communication, e. g., in a directive issued pursuant to the Natural Death Act, should be respected and followed.†

(2) Comatose clients are living human beings whose lives are to be valued; however, this does not mean that all technologies for prolonging life are appropriate or obligatory.

(3) Age, handicaps, economic status, or incompetency should not be determinants of resuscitative status.

(4) Category II status normally reflects a decision to pursue a conservative therapeutic effort in the face of a chronic disabling illness. There may be clients with such severe chronic disabilities or recurring complications that resuscitation would be an unnecessary burden even though they are not in the final stages of a single, defined terminal illness. The physician, with the consultation and consent of the client, or, if the client is unable to participate in decisionmaking, the client's legal guardian and family, may order the further restriction of other measures. In such cases, although treating the intervening illness remains the primary goal, full resuscitation could be considered nonobligatory and a Category II order would be appropriate.

(5) A Category III order does not indicate withdrawal of palliative procedures. A client for whom such an order has

been written will receive all the usual care given to enhance comfort, dignity, safety, and a sense of well-being.

(6) In any problematic case involving a Category II or III designation or when a client with a Category II or III designation has no family or legal guardian, consultation with the facility ethics committee should be sought.†

**§405.55. Determination and Implementation of Resuscitative Status Order.**

(a) All clients will be initially evaluated on an individual basis as to resuscitative status by the attending physician.

(1) If the attending physician does not categorize the client, the client will automatically be considered Category I.

(2) If the client is competent and wishes to be classified Category II or III, and the client's family and physician concur, the client's wish will be honored. If the family or physician disagrees, the client's wish should be honored, especially when the client has issued a valid directive in accordance with the Texas Natural Death Act.

(3) When the client is incompetent, comatose, or incapable of communication, the wishes of the legal guardian and family will be honored, provided the attending physician concurs. If there is disagreement between the legal guardian and family, within the family, or between the legal guardian or family and physician, the client will be designated Category I status until there is consensus. Consultation with the facility ethics committee should be sought.

(4) If the client is unable to give direction and has no legal guardian or family, the physician(s) should seek consultation with the facility ethics committee before designating a Category II or III resuscitative status for the client.

(b) When the client's condition deteriorates subsequent to initial categorization, and this contingency has not been previously addressed by the ethics committee, the client may be reclassified by following the procedure described in subsection (a) of this section.

(c) The attending physician will note in the medical record that the client or the client's legal guardian or family have been consulted and concur with the designated status (or redesignation) and its therapeutic philosophy. Such consultations should be witnessed and documented.

(d) The resuscitative status category must be evaluated and documented by the attending physician (or his/her physician designee) at least monthly. This should be reevaluated when there is a significant change in the client's clinical condition. Documentation will be in the physician's orders section and the progress notes section of the chart. If an order to renew the

resuscitative status category of a client is not updated in writing, the client will automatically be considered Category I until redesignated by the physician.

(e) When the physician has documented the need and written an order for a Category II or III designation, an appropriate color-coded form will be placed in the client's chart. This form will have appropriate spaces for documentation of the periodic review. Orange forms will designate Category II and red Category III.

*§405.56. General Provisions Relating to Withholding or Withdrawal of Life-Sustaining Treatment under the Texas Natural Death Act.*

(a) The attending physician is charged with the responsibility of determining that all of the requirements of the Texas Natural Death Act, herein adopted by reference as Exhibit A, have been fulfilled be-

fore life-sustaining treatment is withheld or withdrawn.

(b) If the attending physician refuses to comply with a directive or treatment decision, the physician shall make a reasonable effort to transfer the client to another physician.

(c) Life-sustaining treatment may not be withheld from a pregnant client.

*§405.57. Legal Expression through Directive under the Texas Natural Death Act.*

(a) When an adult client is competent to make a decision regarding life-sustaining treatment, the client should be informed of the provisions of the Texas Natural Death Act and provided with a copy of the form of the directive herein adopted as Exhibit B. The desires expressed by the competent client should be observed.

(1) The directive may be made in writing at any time that the client is competent to make such a decision.

(2) The directive may also be made by a nonwritten means of communication by a qualified client.

(3) The directive may be revoked by the client at any time, without regard to his mental state or competency.

(4) The competent client's present desire shall at all times supersede a directive.

(5) A competent adult client can designate a person to make a treatment decision in the event that the client becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

(b) A directive may be made on behalf of a qualified client who is under 18 years of age by the client's spouse, if the spouse is an adult; the client's parents; or the client's legal guardian. However, such a directive can be overridden by a competent client's contrary desire, even if the client is under 18 years of age.

# Directive to Physicians For Persons 18 Years of Age and Over

DIRECTIVE made this \_\_\_\_\_ day \_\_\_\_\_ (month, year).

I \_\_\_\_\_, being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this DIRECTIVE shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.
3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this DIRECTIVE shall have no force or effect during the course of my pregnancy.
4. This DIRECTIVE shall be in effect until it is revoked.
5. I understand the full import of this DIRECTIVE and I am emotionally and mentally competent to make this DIRECTIVE.
6. I understand that I may revoke this DIRECTIVE at any time.
7. I understand that Texas law allows me to designate another person to make a treatment decision for me if I should become comatose, incompetent, or otherwise mentally or physically incapable of communication. I hereby designate

\_\_\_\_\_, who resides at \_\_\_\_\_  
(print or type name)

to make such a treatment decision for me if I should become incapable of communicating with my physician.

If the person I have named above is unable to act on my behalf, I authorize the following person to do so:

Name \_\_\_\_\_

Address \_\_\_\_\_

I have discussed my wishes with these persons and trust their judgment.

8. I understand that if I become incapable of communication, my physician will comply with this DIRECTIVE unless I have designated another person to make a treatment decision for me, or unless my physician believes this DIRECTIVE no longer reflects my wishes.

Signed \_\_\_\_\_

City, County and State of Residence \_\_\_\_\_

*Two witnesses must sign the DIRECTIVE in the spaces provided below.*

The declarant has been personally known to me and I believe him/her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his/her decease, nor am I the attending physician of declarant or an employee of the attending physician or a health facility in which declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his/her decease.

Witness \_\_\_\_\_

Witness \_\_\_\_\_

Sample of form of directive incorporating additional instructions. (Promulgated by

# Directive to Physicians For Persons Under 18 Years of Age

DIRECTIVE made this \_\_\_\_\_ day \_\_\_\_\_ (month, year).

On behalf of \_\_\_\_\_, a qualified patient under the Texas Natural Death Act who is under 18 years of age, I/we \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my/our desire that his/her life not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time the patient whose name appears above should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of his/her death and where his/her attending physician determines that his/her death is imminent whether or not life-sustaining procedures are utilized; I/we direct that such procedures be withheld or withdrawn, and that he/she be permitted to die naturally.
2. On behalf of the said patient, it is my/our intention that this DIRECTIVE shall be honored by his/her physicians as the final expression of my/our legal right to refuse medical or surgical treatment on behalf of the said patient and to accept the consequences from such refusal.
3. If she has been diagnosed as pregnant and that diagnosis is known to her physician, this DIRECTIVE shall have no force or effect during the course of her pregnancy.
4. This DIRECTIVE shall be in effect until it is revoked. I/we understand that my/our authority to execute this DIRECTIVE on behalf of the above-named patient expires on his/her 18th birthday.
5. I/we understand the full import of this DIRECTIVE and I/we am/are emotionally and mentally competent to make this DIRECTIVE.
6. I/we understand that the desire of the above-named patient, if mentally competent, to receive life-sustaining treatment shall at all times supercede the effect of this DIRECTIVE.

Signed \_\_\_\_\_

City, County, and State of Residence \_\_\_\_\_

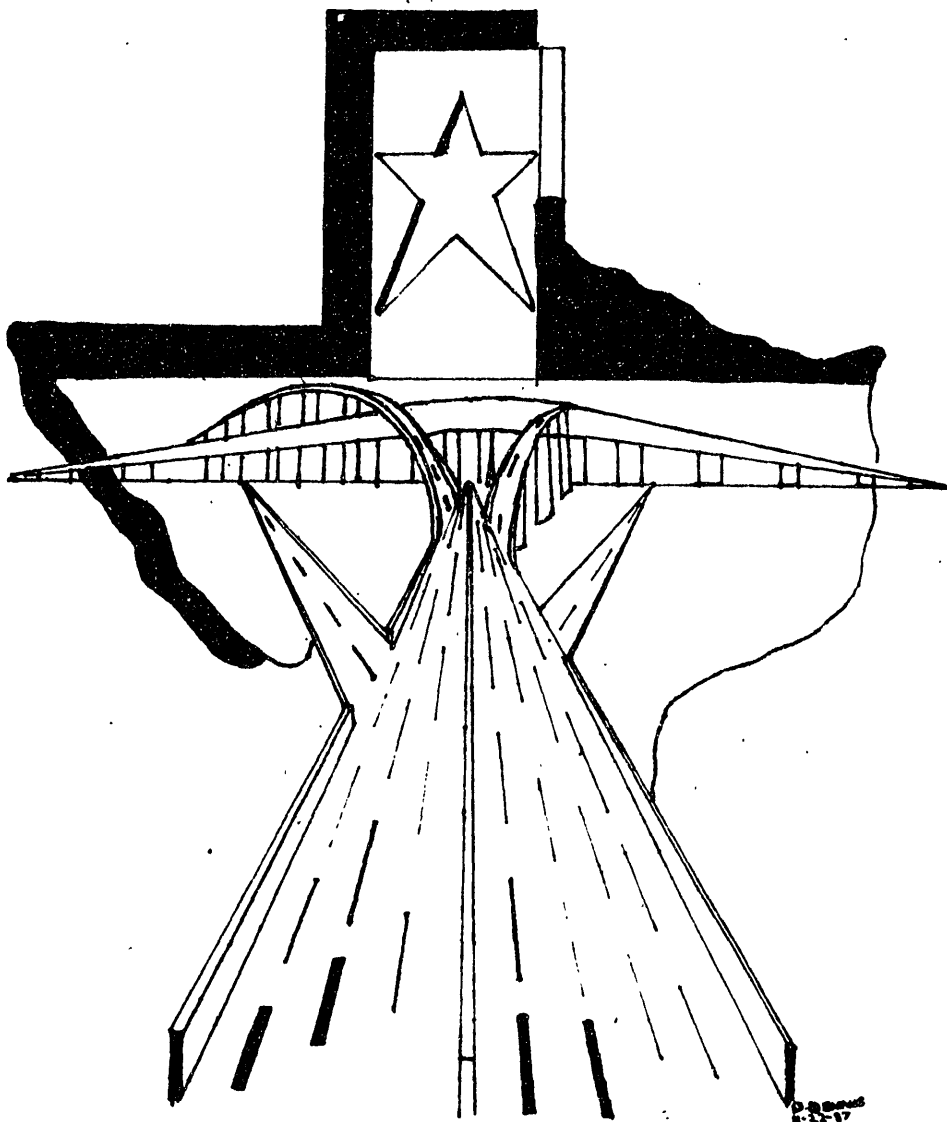
Indicate relationship to patient \_\_\_\_\_ Spouse \_\_\_\_\_ Parents \_\_\_\_\_ Legal Guardian

*Two witnesses must sign the directive in the spaces provided below.*

The declarant(s) has/have been personally known to me and I believe him/her/them to be of sound mind. I am not related to the patient whose name appears above by blood or marriage, nor would I be entitled to any portion of the patient's estate on his/her decease, nor am I the patient's attending physician or an employee of the attending physician or a health facility in which the patient is being treated, or a patient in the health care facility in which the above-named patient is being treated, or any person who has a claim against any portion of the patient's estate upon his/her decease.

Witness \_\_\_\_\_

Witness \_\_\_\_\_



Name: Devin Dennis  
Grade: 11  
School: Sam Houston High, Houston



**§405.58. Decisionmaking under the Texas Natural Death Act for clients who Have Issued Directives.**

(a) The desires expressed by a competent client through directive should be honored.

(b) When a client is incompetent to make a decision regarding life-sustaining treatment but was previously competent and at that time designated a person through directive to make such a decision, the person so designated will be accorded decisionmaking power.

(c) When a client is unable to communicate and has previously issued a directive without designating a person to make treatment decisions, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the present desire of the client.

**§405.59. Decisionmaking under the Texas Natural Death Act for Clients Who Have Not Issued Directives.**

(a) When a client is incompetent to make a decision regarding life-sustaining treatment, has not previously issued a directive while competent, and has a legal guardian, the legal guardian of the client, along with the attending physician, making a decision based on knowledge of what the client would desire, if known.

(b) When a client is incompetent to make a decision regarding life-sustaining treatment, has not previously issued a directive while competent, and does not have a legal guardian, at least two of the following persons, in order of priority, along with the attending physician, can make the decision: the client's spouse, a majority of the client's reasonably available adult children, the client's parents, or the client's nearest living relative.

(c) When a client is unable to give direction regarding life-sustaining treatment; has not, while competent, issued a directive or designated another person to make such a decision; does not have relatives as described in subsection (b) or such relatives are unavailable or unwilling to participate in decisionmaking; and has no legal guardian, the appointment of a legal guardian should be sought by the facility to the extent authorized by law or, in acute situations, the provisions of §405.60 of this title (relating to The Ethics Committee), should be followed.

**§405.60. Ethics Committee.**

(a) An ethics committee should be established at each facility.

(b) The ethics committee should consist of one facility physician; two consulting physicians; a registered nurse; a member of the clergy not affiliated with the facility or TDMHMR; an attorney not affiliated with the facility or TDMHMR; two licensed facility medical support staff, such as a physical therapist, clinical pharmacist,

clinical psychologist, or occupational therapist; a facility social worker (CSW-ACP certified); a consulting social worker (CSW-ACP certified); a client rights representative; a representative of a parents' group (state schools only); and a representative of an advocacy group.

(c) Consultation with the ethics committee may be sought for any treatment decision, but should be sought as follows:

(1) when a client is unable to give direction regarding the withholding or withdrawal of life-sustaining treatment, has no legal guardian, and has no person legally designated to make such a decision according to provisions of the Texas Natural Death Act; and

(2) when a decision regarding the withholding or withdrawal of life-sustaining treatment is to be made and there is a conflict between or among the decisionmakers.

**§405.61. References.** References is made in this subchapter to the Texas Natural Death Act, Texas Civil Statutes, Article 4590h.

**§405.62. Distribution.**

(a) This subchapter shall be distributed to the medical director, deputy and assistant deputy commissioners, and directors of Central Office; and to superintendents/directors of all TDMHKMR facilities.

(b) The superintendent/director will ensure distribution of this subchapter to all appropriate staff.

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 May 17, 1988.

TRD-8805009

Pattilou Dawkins  
Chairman Texas Board of  
Mental Health and  
Mental Retardation  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: June 24, 1988.

For further information, please call: (512) 465-4670

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part II. Industrial Accident Board**

◆ ◆ ◆  
**Chapter 53. Carrier's Report of Initiation and Suspension of Compensation Payments**

◆ ◆ ◆  
**• 28 TAC §53.63**

The Industrial Accident Board proposes new §53.63, concerning suspension of weekly compensation. This new section sets out the

conditions under which the carrier is permitted to suspend payment of weekly compensation.

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

Mr. McAnally 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 formalization of the board's long-standing policy regarding the injured worker's entitlement to weekly compensation. 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 Scott McAnally, Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Texas Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation act.

**§53.63. Suspension of Weekly Compensation.** The carrier may not suspend payment of weekly compensation until:

(1) the injured worker returns to work;

(2) the impaired worker is released by a physician to return to work;

(3) the worker refuses employment procured for him/her as provided by the Workers' Compensation Act, Article 8306, §12a;

(4) the statutory maximum benefit has been paid; or

(5) the claim is resolved by settlement or award.

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 May 17, 1988.

TRD-8805063

Scott McAnally  
Executive Director  
Industrial Accident Board

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 448-7962.

# TITLE 34. PUBLIC FINANCE

## Part IX. Texas Bond Review Board

### Chapter 181. Bond Review Board

#### • 34 TAC §§181.1-181.10

The Texas Bond Review Board proposes new §§181.1-181.10, concerning the procedures and standards for review of the issuance of state bonds subject to review by the board. The sections outline the timing of, and the content required in, notices of intent to issue bonds, applications for approval of state bonds, and other documents to be submitted to the board. These sections replace sections adopted earlier on an emergency basis.

Tom K. Pollard, executive director, has determined that for each year of the first five years that the proposed sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections. There will be a gain to state government in the form of lower credit costs for the state. The exact amount of these gains cannot be estimated as they are dependent on the type and volume of future bond issuance which cannot be determined at this time. The fiscal impact on units of local government will be negligible.

Mr. Pollard 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 from the increased knowledge of the extent and implications of state debt issuance.

Comments may be submitted to Tom K. Pollard, Executive Director, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The new sections are proposed under Senate Bill 1027, Chapter 1078, the 70th Legislature, 1987, §3 (Texas Civil Statutes, Article 717K-7), which provide the Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state bonds.

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

**Board**—The Bond Review Board, created by Acts of the 70th Legislature, 1987, particularly Senate Bill 1027.

**State bond**—

(A) A bond or other obligation issued by:

- (i) a state agency;
- (ii) an entity expressly created by statute and having statewide jurisdiction; or
- (iii) any other entity issuing a bond or other obligation on behalf of the state or on behalf of any entity listed in

clause (i) or (ii) of this subparagraph; or

(B) an installment sale or lease-purchase obligation issued by or on behalf of an entity listed in clause (i), (ii), or (iii) of this subparagraph that has a stated term of longer than five years or has an initial principal amount of greater than \$250,000.

**§181.2. Notice of Intention to Issue.**

(a) An issuer intending to issue state bonds shall submit a written notice to the bond finance office no later than three weeks prior to the date requested for board consideration. The director of the bond finance office shall forward one copy of the notice to each member of the board. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible. The notice is for information purposes only, to facilitate the scheduling of board review activities.

(b) A notice of intention to issue under this section shall include:

(1) a brief description of the proposed issuance including, but not limited to, the purpose, the tentative amount, and a brief outline of the proposed terms;

(2) the proposed timing of the issuance with a tentative date of sale and a tentative date for closing;

(3) a request to have the bond issue scheduled for consideration by the board during a specified monthly meeting; and

(4) an agreement to submit the required application set forth herein in §181.3 of this title (relating to Application for Board Approval of State Bond Issuance) no later than two weeks prior to the requested board meeting date.

(c) An issuer may reschedule the date requested for board consideration of the state bonds by submitting an amended notice of intention at any time prior to the application date in the same manner as provided in this section.

(d) The requested date for board consideration shall be granted whenever possible; however, if it becomes necessary in the board's discretion to change the date of the board meeting for consideration of the proposed issuance of state bonds, written notice of such change shall be sent as soon as possible to the issuer. Priority scheduling for consideration at board meetings shall be given to refunding issues and to those state bonds which also require a submission to the Department of Commerce to obtain a private activity bond allocation. **§181.3. Application for Board Approval of State Bond Issuance.**

(a) An officer or entity may not issue state bonds unless the issuance has been approved or exempted from review by the bond review board. An officer or entity that has not been granted an exemption

from review by the board and that proposes to issue state bonds shall apply for board approval by filing one application with original signatures and six copies with the director of the bond finance office. The director of the bond finance office shall forward one copy of the application to each member of the board and one copy to the Office of the Attorney General.

(b) An application for approval of a lease-purchase agreement must include:

(1) a description of, and statement of need for, the facilities or equipment being considered for lease purchase;

(2) the statutory authorization for the lease purchase proposal;

(3) evidence of all necessary approvals from any state boards, state agencies, etc.; and

(4) a detailed explanation of the terms of the lease purchase agreement including, but not limited to, amount of purchase, trade-in allowances, interest charges, service contracts, etc.

(c) An application for all state bonds other than lease-purchase agreements must include:

(1) a substantially complete draft or summary of the proposed resolution, order, or ordinance providing for the issuance of state bonds;

(2) a brief description of the program under which the state bonds are proposed to be issued, which may include a reference to a legislative enactment or to existing rules if the program is established in accordance with an existing statute or existing rules;

(3) the applicant's plans for use of state bond proceeds, including a description of, statement of the need for, and cost of each specific project for which bond proceeds are proposed to be used;

(4) the applicant's plans for the administration and servicing of the state bonds to be issued, including, when applicable, a disbursement schedule of bond proceeds, the proposed flow of funds, the sources and methods of repayment, and an estimated debt service schedule;

(5) a description of the applicant's investment provisions for bond proceeds including any specific provisions for safety and security and a description of the duties and obligations of the trustee and paying agent/registrars as applicable;

(6) a timetable for financing that contains dates of all major steps in the issuance process, including all necessary approvals;

(7) if the applicant has authority to issue both general obligation and revenue bonds and the proposed issuance is of one of these, a statement of the applicant's reasons for its choice of type of state bonds;

(8) a statement of the applicant's estimated costs of issuance, listed on an item by item basis, including, as applicable, the estimated costs for:

- (A) bond counsel;
- (B) financial advisor;
- (C) paying agent/registrar;
- (D) rating agencies;
- (E) official statement printing;
- (F) bond printing;
- (G) trustee;
- (H) credit enhancement;
- (I) liquidity facility;
- (J) miscellaneous issuance costs;

(9) an estimate, if bond sale is negotiated, of underwriter's spread, broken down into the following components, and accompanied by a list of underwriters' spreads from recent comparable bond issues:

- (A) management fee;
- (B) underwriter's fees;
- (C) selling concessions;
- (D) underwriter's counsel;
- (E) other costs;

(10) a list of the firms providing the services reported in paragraphs (c) (8) and (c)(9) of this section, and a statement of prior representation of the issuer by each firm;

(11) a justification of the decision of whether or not to apply for municipal bond insurance or other credit enhancement, including a comparison of expected bond ratings and borrowing costs for the issue with and without the particular enhancement(s) considered;

(12) a statement of any potential liability of the general revenue fund or any other state funds resulting from the issuance;

(13) a copy of any preliminary written review of the issuance that has been made by the attorney general;

(14) a statement addressing the participation of women and minorities. The purpose of this section is to promote economic opportunity by affording equal access to the procurement of contracts for professional services for the financing of bonds by state issuers. Therefore, the following information about each participant (including, but not limited to, bond counsel, underwriters, underwriter's counsel, and financial advisor) must be included:

(A) the degree of ownership and control of each participant firm by minorities, and women;

(B) the number and percentage of professionally employed women and minorities in each participant's firm; and

(C) a brief description of the effort made by each participant to encourage and develop participation of women and minorities. This description can include internal firm recruitment efforts, any offers tendered for apportioning responsibilities by subcontract or joint venture, and the equal opportunity goals and policies of each participant's firm;

(15) the notification procedures used by or on behalf of the issuer to select the participants referenced in subsection (14) of this section.

(d) In addition to the information required by subsection (c) of this section, an application under this section may include any other relevant information the applicant wants to submit to the board.

(e) At any time before approval of an application by the board, an applicant may withdraw or revise the application.

*§181.4. Meetings.*

(a) The regular meeting of the board shall be held the third Tuesday of each month. Applications for consideration at the regular meeting must be filed with the bond finance office no later than two weeks prior to the date of the regular meeting. Applications filed after that date will be considered at the regular meeting only with the approval of the governor or three or more members of the board.

(b) As chairman of the board, the governor may call additional meetings of the board and is responsible for filing notice of meetings as required by Texas Civil Statutes, Article 6252-17, and giving timely notice of meetings to members of the board. On the petition of three or more members of the board, the governor shall call an additional meeting of the board or cancel a meeting.

(c) A planning session will be held regarding applications pending before the board no later than one week prior to a regular board meeting. Planning sessions regarding applications to be heard at addi-

tional meetings of the board will be held as far in advance of the additional board meeting as is practicable. At a planning session, board members, their designated representatives, or their staff representatives may discuss pending applications, but may not conduct board business. Applicants may be required to attend a planning session and may be asked to make a presentation and answer questions regarding their application. Applicants may be asked to submit written answers to questions regarding their application in lieu of, or in addition to, their attendance at a planning session.

(d) At a meeting of the board, a board member or designated representative may allow an applicant to make an oral presentation to the board.

(e) At a meeting, the board may, by order, resolution, or other process adopted by the board, approve an issuance of state bonds as proposed in the application, may approve an issuance of state bonds on conditions stated by the board, or may fail to act on a proposed issuance. If the board does not act on a proposed issuance during the meeting at which the application is scheduled to be considered, the application is no longer valid on the occurrence of the earlier of the expiration of 45 days from the date of the meeting at which the application was scheduled to be considered or immediately following the board's next meeting if the board fails to act on the proposed issuance at that meeting. If an application becomes invalid under this subsection, the applicant may file a new application for the proposed issuance.

(f) The executive director of the bond finance office shall notify applicants in writing of any action taken regarding their application. A letter of approval shall contain the terms and conditions of the issue as approved by the board. Issuers must inform the director of the bond finance office of changes to the aspects of their application which are specified in the approval letter. Such changes may prompt reconsideration of the application by the bond review board. A copy of the approval letter shall be forwarded to the attorney general.

(g) If applicable law requires the approval by the attorney general of an issuance of state bonds that are not exempt from review by the board, attorney general approval must be obtained after approval by the board.

(h) If there is a dispute among members regarding the conduct of board meetings, standard parliamentary rules shall apply.

*§181.5. Submission of Final Report.*

(a) Within 60 days after delivery of the state bonds and receipt of the state bond proceeds the issuers shall submit one original and one copy of a final report to the bond finance office and a single copy of the final report to the Texas Comptroller of Public Accounts.

(b) A final report must include:

(1) all actual costs of issuance including, as applicable, the specific items listed in §181.3(c)(8) and (9) of this title (relating to Application for Board approval of State board of Issuance), all closing costs, and any other costs incurred during the issuance process; and

(2) a complete bond transcript including the preliminary official statement and the final official statement, private placement memorandum, if applicable, or any other offering documents as well as all other executed documents pertaining to the issuance of the state bonds. The issuer also must submit a copy of the winning bid form and a final debt service schedule (if applicable).

(c) Submission of this final report is for the purpose of compiling data and disseminating information to all interested parties. The cost of reproduction of any and all portions of the final documents shall be borne by each requesting party.

(d) The bond finance office shall prepare and distribute to the members of the bond review board a summarization of each final report within 30 days after the final report has been submitted by the issuer. This summarization shall include a comparison of the estimated costs of issuance for the items listed in §181.3(c)(8) and (9) of this title (relating to Application of Board Approval of State Board Issuance) contained in the application for approval with the actual costs of issuance listed in paragraph 181.5(b)(1) of this section submitted in the final report. This summarization must also include such other information, which in the opinion of the bond finance office, represents a material addition to, or a substantial deviation from, the application for approval.

**§181.6. Official Statement.**

(a) The official statement or any other offering documents prepared in connection with issuance of bonds approved by the board must conform, to the extent feasible, to the *Disclosure Guidelines for State and Local Government Securities* published by the Government Finance Officers Association (January 1988). The preliminary official statement, or other offering documents, shall be submitted to and reviewed by the director of the bond finance office prior to mailing. Issuers should submit early drafts of the preliminary official statement to the director of the bond finance office to allow adequate time for review. Review of the preliminary official statement by the director of the bond finance office is not to be interpreted as a certification as to the accuracy, timeliness, and completeness of the specific data in the document. These standards remain the responsibility of the provider(s) of the data.

(b) The comptroller shall certify the accuracy and completeness of statewide economic and demographic data, as well as

revenues, expenditures, current fund balances, and debt service requirements of bonded indebtedness of the state contained in the preliminary official statement. This data shall be used unchanged in the final official statement unless changes are approved in writing by the comptroller. The comptroller may execute a waiver of any part of this subsection.

**§181.7. Designation of Representation.** A member of the board may designate another person to represent the member on the board by filing a designation to that effect with the director of the bond finance office. A designation of representation filed under this section is effective until revoked by a subsequent filing by the member with the bond finance office. During the time a designation of representation is in effect, the person designated has all powers and duties as a member of the board, except the authority to make a designation under this section.

**§181.8. Assistance of Agencies.** A member of the board may request the Legislative Budget Board, the Office of the Attorney General, or any other state agency to assist the member in performing duties as a member of the board.

**§181.9. Exemptions.** The board may exempt certain bonds from review and approval by the board. The board may from time to time publish in the *Texas Register* a list of state bonds that are exempt.

**§181.10. Annual Issuer Report.** All state bond issuers whose bonds are subject to review by the board must file a report no later than September 15 of each year with the bond finance office to include:

(1) the investment status of all unspent state bond proceeds (i.e., the amount of proceeds, name of institution, type of investment program or instrument, maturity and interest rate);

(2) an explanation of any change during the fiscal year previous to the deadline for this report, in the debt retirement schedule for any outstanding bond issue (e.g. exercise of redemption provision, conversion from short-term to long-term bonds, etc.); and

(3) a description of any bond issues expected during the fiscal year, including type of issue, estimated amount, and expected month of sale.

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 May 17, 1988.

TRD-8805043 Tom K. Pollard  
Executive Director  
Texas Bond Review Board

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 463-1741

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part IX. Texas Department on Aging

#### Chapter 266. In-Home Services for Frail Older Individuals

##### Statutes and Regulations

- 40 TAC §§266.1, 266.3, 266.5, 266.7, 266.9, 266.11, 266.15, 266.17

The Texas Department on Aging proposes new §§266.1, 266.3, 266.5, 266.7, 266.9, 266.11, 266.15, and 266.17, concerning in-home services for frail older individuals. The new sections are proposed in accordance with the Older Americans Act, Title III, Part D, which authorizes in-home services to frail older persons, including in-home supportive services for older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunctions, and to the families of such victims.

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

Alex Guerra, director of programs, Texas Department on Aging, 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 provision of services to the elderly who have been specifically targeted to be in the greatest need for services to maintain their ability to live independently. 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 Edwin R. Floyd, Program Liaison, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

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

**§266.1. In-Home Services for Frail Older Individuals.** The Older Americans Act, Title III, Part D, authorizes a program to provide in-home services to frail older persons, including in-home supportive services for older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunctions, and to the families of such victims.

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

Frail—Having a physical or mental

disability, including having Alzheimer's disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or which threatens the capacity of an individual to live independently.

**Greatest economic need**—The need resulting from an income level at or below the poverty levels established by the Office of Management and Budget.

**Greatest social need**—The need caused by noneconomic factors which include language barriers and cultural, social, and geographical isolation, including that caused by racial or ethnic status, which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently.

**In-home services**—Services which consist of the following activities:

- (1) homemaker and home health aides;
- (2) visiting and telephone reassurance;
- (3) chore maintenance;
- (4) in-home respite care for families;
- (5) adult day care as a respite service for families; and
- (6) minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under other programs.

**§266.5. Units of Service.** Units of service for services authorized under this section are as follows:

- (1) homemaker and home health aides—one hour;

- (2) visiting and telephone reassurance—one contact;

- (3) chore maintenance—one hour;

- (4) in-home respite care—one contact;

- (5) adult day care as a respite for families—1/2 day;

- (6) minor modification of homes—one unduplicated dwelling unit.

**§266.7. Service Objective.** The objective of this array of services is to meet the growing need for in-home and supportive services for the growing number of older persons with special needs to avoid premature institutionalization of these elderly persons.

**§266.9. Preferred Target Group.** To be eligible for in-home services under this section, an individual must meet the following criteria:

- (1) 60 years of age or older;

- (2) frail, as defined in §266.3(b) of this chapter (relating to Definitions);

- (3) without other significant support systems, which includes without access to persons that are able and willing to perform the needed services;

- (4) in greatest economic need as defined in §266.3(c) of this chapter (relating to Definitions); and

- (5) in greatest social need as defined in §266.3(d) of this chapter (relating to Definitions).

**§266.11. Service Activities.** Area agencies on aging will plan for the implementation of these services through data collection and needs assessment procedures and will provide technical assistance to service providers which apply for and/or conduct these services at the local level.

**§266.13. Location of Services.** Aging services providers will make these services available in the homes of the elderly who meet the service need identified in §266.3 (relating to Definitions) and §266.9 (relating to Preferred Target Group).

**§266.15. Access to Services.** Access to services will be acquired from either the area agency on aging identifying elderly persons qualified and in need of these services under this chapter or by the aging service provider.

**§266.17. Prohibited Activities.**

(a) Funds made available under this part shall be in addition to, and may not be used to supplant, any funds that are or would otherwise be expended under any federal, state, or local law or a unit of general purpose government (including area agencies on aging which have in their planning and services areas existing services which primarily serve older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and the families of such victims).

(b) Not more than \$150 per client may be expended for minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under other programs.

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 May 16, 1988.

TRD-8804968

O.P. (Bob) Bobbitt  
Executive Director  
Texas Department on  
Aging

Earliest possible date of adoption: June 24, 1988

For further information, please call: (512) 444-2727





Name: Jose Esparza  
Grade: 12  
School: Sam Houston High, Houston

# Withdrawn Sections

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

## TITLE 1. ADMINISTRATION

### Part 1. Office of the Governor

#### Chapter 5. Budget and Planning

#### Subchapter B. State and Local Review of Federal and State Assistance Applications

##### 1 TAC §§5.51-5.57

The Office of the Governor has withdrawn from consideration for permanent adoption a proposed §§5.51-5.57, which appeared in the May 17, 1988, issue of the *Texas Register* (13 TexReg 2207). The effective date of this withdrawal is May 17, 1988.

Issued in Austin, Texas on May 17, 1988.

TRD-8905015      D. R. Millard, III  
Assistant General Counsel  
Office of the Governor

Effective Date: May 17, 1988

For further information, please call: (512)  
463-1788

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Labor and Standards

#### Chapter 80. Tow Trucks

##### 16 TAC §80.1

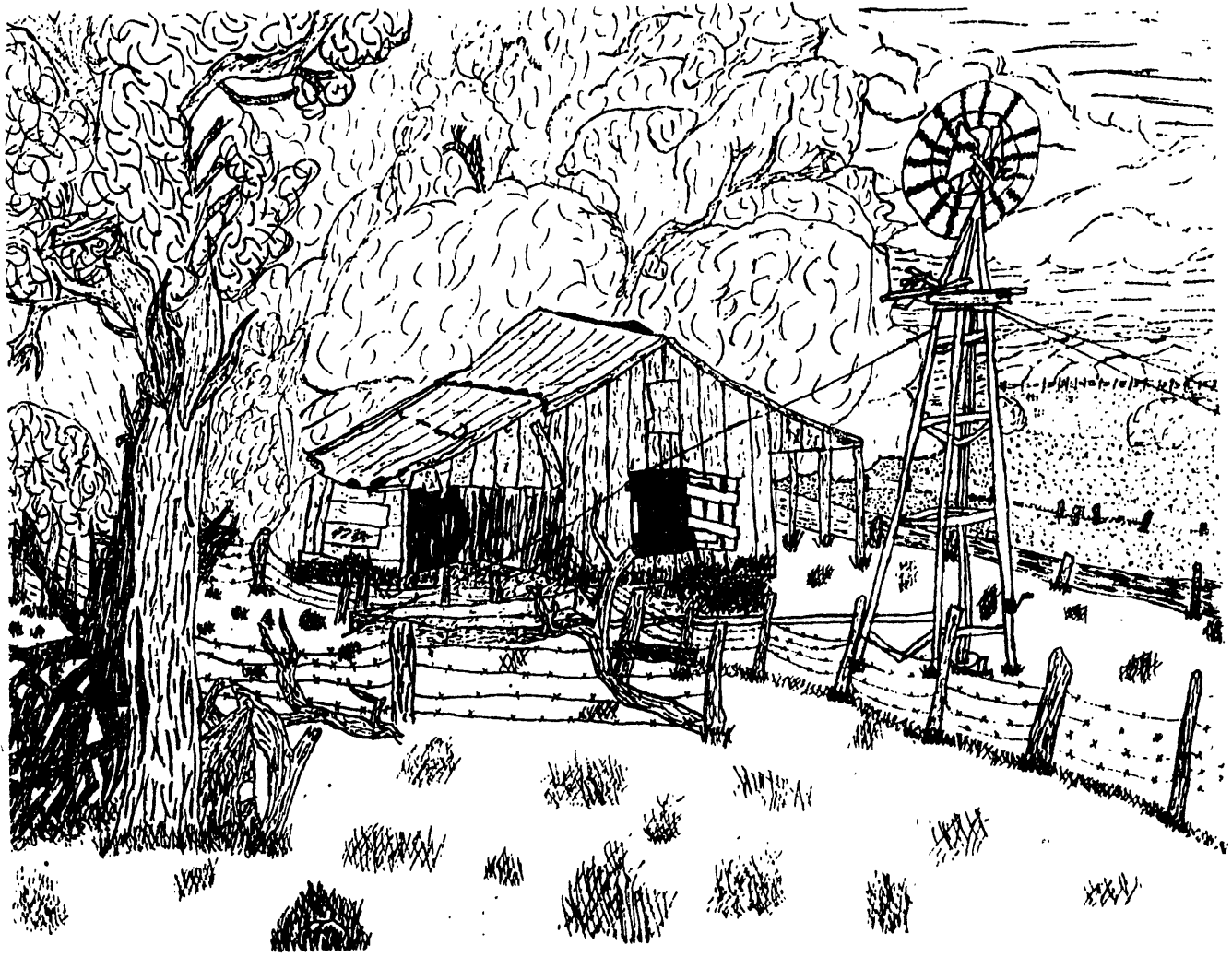
The Texas Department of Labor and Standards has withdrawn proposed §80.1, concerning the tow trucks. The text of proposed §80.1 appeared in the December 15, 1987, issue of the *Texas Register* (12 TexReg 4675). The effective date of this withdrawal is May 17, 1988.

Issued in Austin, Texas, on May 17, 1988.

TRD-8905033      Jennifer Mellett  
General Counsel  
Texas Department of Labor  
and Standards

Effective date: May 17, 1988

For further information, please call: (512)  
463-3128



Name: Morris Willie  
Grade: 9  
School: Pemberton High, Marshall



# 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 13. CULTURAL RESOURCES

### Part II. Texas Historical Commission

#### Chapter 13. State Marker Program

13 TAC §§13.1-13.3, 13.7, 13.8, 13.10, 13.13, 13.17, 13.20, 13.22, 13.24, 13.26

The Texas Historical Commission adopts amendment to §§13.1-13.3, 13.7, 13.8, 13.10, 13.13, 13.17, 13.20, 13.22, and 13.24, and new §13.26 without changes to the proposed text published in the April 5, 1988, issue of the *Texas Register* (13 TexReg 1584).

The Texas Historical Commission adopts these previously published proposed sections to follow through with the commission's plan to publish newly formatted, revised, and updated sections in pamphlet form for the benefit of the general public. The new pamphlet will be easy to read and understand, and will be readily available to the public at large.

The adopted sections will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

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 Brownsville, Texas, on April 21, 1988.

TRD-8805000  
Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: April 5, 1988

For further information, please call: (512) 463-6100.

#### Chapter 15. Administration of Federal Programs

##### • 13 TAC §15.1, §15.2

The Texas Historical Commission adopts amendments to §15.1, and §15.2, without changes to the proposed text published in the April 5, 1988, issue of the *Texas Register* (13 TexReg 1565).

The amendments will follow through with the commission's plan to publish newly formatted, revised, and updated sections in pamphlet form for the benefit of the general public. The new pamphlet will be easy to read and understand, and will be readily available to the public at large.

The amendments will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

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 Brownsville, Texas, on April 21, 1988.

TRD-8805001  
Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: April 5, 1988

For further information, please call: (512) 463-6100.

##### • 13 TAC §15.6

The Texas Historical Commission adopts an amendment to §15.6, with changes to the proposed text published in the April 4, 1988, issue of the *Texas Register* (13 TexReg 1586).

The amendment will follow through with the commission's plan to publish newly formatted, revised, and updated sections in pam-

phlet form for the benefit of the general public. The new pamphlet will be easy to read and understand and will be readily available to the public at large. The changes from the proposed version occur in paragraph (f)(6), and in subparagraph (m)(1)(B).

The amendment will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

§15.6. Rules and Procedures for Certified Local Governments.

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

(c) Funds for certified local governments. The Act provides that at least 10% of the state's annual historic preservation fund allocation from the Department of the Interior shall be designated for transfer to certified local government programs. Although all certified local governments shall be eligible to receive funds from this allocation, there is no requirement that funds be awarded to all local governments that are eligible.

(d) The need for rules. The following rules provide the procedures by which local governments may become certified local governments and by which application may be made for federal funds. The rules are also intended to assure that the performance of a certified local government is consistent with the identification, evaluation, and preservation priorities of the Texas Historical Commission's statewide, comprehensive, historic preservation planning process.

(e) County Participation. Counties shall participate in the certified local government process through compliance with the Texas Local Government Code, Chapter 318, which empowers the commissioners court of each county to appoint a county historical commission, and specifies the duties of such a commission.

(f) Minimum requirements for certification of local governments.

(1) Cities and towns shall en-

force appropriate state and local legislation for the designation and protection of historic properties. Ordinances of these municipal governments shall provide for the following:

(A) authorization for historic preservation under the Local Government Code, Chapter 211, Municipal Zoning Authority as amended;

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

(D) establishment by ordinance of a review commission, board, or committee for historic preservation and the granting of specified powers to it;

(E) (No change.)

(F) establishment of standards and criteria for the review of alterations, demolition, or new construction in designated historic districts or to individual historic landmarks, with the adoption of the Secretary of the Interior's Standards for Historic Preservation Projects and/or the Standards for Rehabilitation;

(G)-(H) (No change.)

(2) Counties shall enforce appropriate state legislation for the protection of historic properties. By-laws adopted by an appointed county historical commission shall provide for the following:

(A) designation of a county official, staff person, or other appropriate resident of the county as local preservation officer;

(B) statement of purpose;

(C) establishment of a review board or committee for historic preservation and the granting of specified responsibilities to it;

(D) definition of a process of surveying (identifying), evaluating, registering, documenting and protecting (treatment) of individual historic properties and districts;

(E) provision for developing and maintaining an inventory of surveyed (identified) individual historic properties and districts;

(F) establishment of a system for the periodic review of Recorded Texas Historic Landmarks, State Archaeological Landmarks, or individual historic properties or districts listed in the National Register of Historic Places located in the county; and

(G) adoption of the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as the standards for all county historical commission activities.

(3) The local government shall establish an adequate and qualified review commission, board, or committee for historic preservation composed of professional and lay members. The commission, board, or committee shall fulfill the following requirements:

(A) the review commission, board, or committee shall have no fewer than five members and no more than fifteen.

(B) Members of the review commission, board, or committee shall be residents of the county or municipal entity for which they serve, and shall represent the general ethnic make up of that community.

(C) All review commission, board, or committee members shall have a demonstrated interest, competence, or knowledge in historic preservation. To the extent available in the community, the local government is to appoint professional members from the disciplines of architecture, history, architectural history, planning, archaeology, or other disciplines related to historic preservation such as urban planning, American studies, American civilization, cultural geography, or cultural anthropology.

(D) When a professional in the fields of history, architecture, architectural history, planning, or archaeology is not represented in the membership of the review commission, board, or committee, then the commission, board, or committee shall seek outside expertise in the appropriate discipline when considering National Register nominations and actions that will affect historic properties which are normally evaluated by a professional in such disciplines. This expertise may be obtained through using a consultant, provided that the Texas Historical Commission has approved the consultant in advance on each occasion he or she is required. A government may be certified without the minimum number or types of disciplines noted in subparagraph (C) of this paragraph, provided it can demonstrate to the commission's satisfaction that a reasonable effort was made to fill those positions, and that such expertise was not available in the community.

(E) Terms of office shall be staggered, with initial terms of one, two, and three years to prevent a simultaneous turnover of all review commission, board,

or committee members. Subsequent terms shall be for a period of at least two years.

(F) Meetings of the review commission, board, or committee shall be held monthly unless no applications for work have been received, or unless no commission action is required.

(G) A handbook, approved by the Texas Historical Commission, shall be provided each commission, board, or committee member.

(H) The review commission, board, or committee shall be represented each year at a minimum of one informational or educational meeting which is sponsored by the Texas Historical Commission, and which pertains to the current work and functions of the review commission, board, or committee or to other related historic preservation topics. The Texas Historical Commission shall make available orientation materials and training to all local commissions, boards, or committees.

(I) Written minutes shall be maintained which record all actions of the review commission, board, or committee and the reasons for taking such actions. These minutes shall be the responsibility of the secretary of the commission, board, or committee and copies shall be distributed to the members of the review commission, board, or committee and to the Texas Historical Commission within sixty days of the date of a commission, board, or committee meeting.

(J) The review commission, board, or committee shall monitor and report to the Texas Historical Commission any actions affecting any county courthouse, recorded Texas historic landmark, state archaeological landmark, National Register property, and any locally designated landmark.

(4) The local government shall implement and maintain a system for the survey and inventory of historic properties which shall be coordinated with, and be complementary to, the historic sites inventory of the Texas Historical Commission, and which shall be subject to the following provisions.

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

(E) A building-by-building survey and inventory shall be made for each historic district.

(5) The local government shall provide for public participation in the local historic preservation program, including the process of nominating properties to the National Register of Historic Places.

(A) (No change.)

(B) Careful minutes shall be kept of all meetings of the review commission. The reasons for commission, board, or committee decisions are to be fully stated in the minutes, which are to be kept on file and available for review by the public.

(6) The local government shall satisfactorily perform the responsibilities mandated in paragraphs (1-5) of this subsection, and those specifically delegated to it by the state historic preservation officer. The state historic preservation officer does not delegate to any certified local government the authority to nominate properties directly to the National Register of Historic Places.

(7) The local government may assume additional responsibilities agreed to by the state historic preservation officer.

(8) The state historic preservation officer, or his designee, shall have a reasonable opportunity to review all records and materials pertinent to the implementation of these regulations.

(g) Participation by certified local governments in the process of nominating properties to the National Register.

(1) All documentation and materials necessary for the nomination of properties to the National Register of Historic Places shall be received by the National Register Programs Office of the Texas Historical Commission. The department shall notify the certified local government of proposed nominations if there is a reasonable certainty that the proposal will result in the implementation of the nomination process.

(2) If the properties to be nominated lie within the jurisdiction of a certified local government, the National Register Programs office shall transmit the nomination materials to the historic preservation review commission, board, or committee within 30 days after the department has determined that the nomination materials are complete and correct. This will be accompanied by a preliminary National Register Programs office staff recommendation in regard to the form, content, and merit of the proposed nomination.

(3) The historic preservation review commission, board, or committee and the chief elected official of the certified local government shall separately notify the National Register Programs office, the owner of the property, and the applicant as to their opinions in regard to the proposed nomination within 60 days of the receipt of the nomination materials. In the 60 day period, the certified local government shall provide a reasonable opportunity for public comment.

(4) In the event that the historic preservation review commission, board, or

committee and the chief elected official agree that the proposed nomination meets the criteria for listing properties, the National Register Programs office will place the proposed nomination before the State Board of Review at the earliest possible quarterly meeting for its consideration.

(5) In the event the historic preservation review commission, board, or committee and the chief elected official disagree that the proposed nomination meets the criteria for listing in the National Register of Historic Places, the National Register Programs office will place the proposed nomination before the State Board of Review at the earliest possible quarterly meeting.

(6) In the event the historic preservation review commission, board, or committee and the chief elected official agree that the proposed nomination does not meet the criteria for listing on the National Register of Historic Places, the historic preservation review commission, board, or committee will return the nomination materials to the National Register Programs office who shall take no further action unless, within 30 days of the receipt of such nomination materials to the National Register Programs office an appeal is filed with the National Register Programs office. If such an appeal is filed, the National Register Programs office shall place the nomination before the State Board of Review at the earliest possible quarterly meeting.

(7) (No change.)

(h) Process for certification of local governments.

(1) The chief elected official of a city or town shall request certification from the state historic preservation officer. The request for certification shall include the following:

(A) a written assurance by the local chief elected official that the local government is fulfilling the standards for certification outlined in paragraphs (f)(1)-(5) of this section;

(B)-(E) (No change.)

(2) The chief elected official of a county shall request certification from the state historic preservation officer. The request for certification shall include the following:

(A) a written assurance by the local chief elected official that the local government is fulfilling the appropriate standards for certification outlined in paragraphs (f)(1)-(5) of this section;

(B) a copy of the county historical commission's by-laws including designation of a review board or committee with specific responsibilities as outlined in

paragraphs (f)(1)-(5) of this section;

(C) a list, with appropriate location maps, of recorded Texas historic landmarks, state archaeological landmarks, and any individual properties or districts surveyed (identified) and/or listed on The National Register of Historic Places with statements about the historical significance of the properties;

(D) resumes or completed standard forms outlining the experience of each member of the local review board for the committee for historic preservation including, where appropriate, data documenting the expertise of members in the professional fields related to historic preservation; and

(E) a copy of the local historic preservation plan, if available, or a statement of goals and objectives for the local preservation program, including the activities of survey (identification), evaluation, registration, documentation, and protection (treatment).

(3)-(4) (No change.)

(5) Upon approval of a request for certification, according to the approved certification process, the state historic preservation officer shall prepare a written certification agreement that lists the specific responsibilities of the local governments when certified. The following shall be contained within the written certification agreement:

(A) the four minimum responsibilities required of all certified local governments as outlined in paragraphs (f)(1)-(5) of this section.

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

(6) The state historic preservation officer shall forward to the secretary of the interior a copy of the approved request and a copy of the certification agreement.

(i) Process for monitoring certified local governments.

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

(5) The performance of the certified local government shall be reviewed by the state historic preservation officer on the basis of recognized standards for historic preservation activities. These standards shall include but not be limited to, The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation; National Register criteria for evaluation in reviewing the local government's role in the National Register program; state survey grant requirements in assessing the local government's execution of the survey requirement of the certified local government regulations; and The Sec-

retary of the Interior's Standards for Historic Preservation Projects and/or Standards for Rehabilitation in considering the city's and town's role in overseeing work to locally designated landmarks and districts.

(j) (No change.)

(k) Eligibility for receipt of historic preservation funds.

(1) Any certified local government shall be eligible to apply for, and to receive, grants from the local share of the state's historic preservation fund which is allocated annually. Any year in which the total appropriation for state grants from the historic preservation fund exceeds \$65,000,000, 1/2 of the excess shall also be transferred to certified local governments according to procedures to be provided by the secretary.

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

(2) Historic preservation fund monies allocated to certified local governments are to be used only for activities that are eligible for historic preservation fund assistance and that are consistent with a statewide comprehensive historic preservation planning process.

(l) (No change.)

(m) Application procedures for grants.

(1) The pre-application form.

(A) (No change.)

(B) A pre-application form should briefly describe the need, the proposed work, probable professionals to be involved, expected costs with matching capabilities, anticipated project duration, and any deadlines and specific schedules the applicant will adhere to. If a grant is awarded, a project proposal for specific work based upon a set time schedule will be required for review and approval prior to project commencement.

(C)-(H) (No change.)

(2)-(3) (No change.)

(4) The project contract. A contractual agreement, approved by the office of the Texas attorney general, specifying the approximate scope of work, a timetable for completion, and a list of budgetary concerns will be prepared by the Texas Historical Commission on the basis of the project proposal and consultations with the grant recipient. This contract shall also contain the minimum requirements for certified local governments as outlined in paragraphs (f)(1)-(5) of this section. The agreement shall be signed by the parties involved, including the appropriate legal representatives.

(5)-(6) (No change.)

(7) Project certification and final report. Twenty-five percent of the money amount of the grant awards will be retained by the Texas Historical Commission and paid to the grantee upon certification of the completed project and receipt of a detailed and documented final report. All material will be reviewed within 21 days of submission to the Texas Historical Commission.

(8) (No change.)

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

Issued in Brownsville, Texas, on April 21, 1988.

TRD-8805002

Curtis Tunnell  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: April 5, 1988

For further information, please call: (512) 463-6100

## Chapter 17. State Architectural Programs

### • 13 TAC §§17.1-17.3

The Texas Historical Commission adopts amendments to §§17.1-17.3. Section 17.3 is adopted with changes to the proposed text published in the April 5, 1988, issue of the *Texas Register* (13 TexReg 1588). Section 17.1, and §17.2 are adopted without changes and will not be republished.

The amendments will follow through with the commission's plan to publish newly formatted, revised, and updated sections in pamphlet form for the benefit of the general public. The new pamphlet will be easy to read and understand and will be readily available to the public at large. The changes in §17.3 in the proposed version occur in subparagraph (1)(B).

The amendment will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, which provide the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

§17.3. *Review of Work on Courthouses.* Texas Government Code, Chapter 442, §442.008, require that the Texas Historical Commission review changes made to courthouse structures.

(1) Definitions. The following words and terms, when used in this subsection, shall have the following meaning, un-

less the context clearly indicates otherwise.

(A) (No change.)

(B) Sell-To give up (property) to another for money or other valuable consideration.

(C)-(D) (No change.)

(E) Integrity—Refers to the physical condition and therefore the capacity of the resource to convey a sense of time and place or historic identity. Integrity is a quality that applies to location, design, setting, materials, and workmanship. It refers to the clarity of the historic identity possessed by a resource. In terms of architectural design, to have integrity means that a building still possess much of its mass, scale, decoration, and so on, of either the period in which it was conceived and built, or the period in which it was adapted to a later style which has validity in its own right as an expression of historical character or development. The question of whether or not a building possesses integrity is a question of the building's retention of sufficient fabric to be identifiable as a historic resource. For a building to possess integrity, its principal features must be sufficiently intact for its historic identity to be apparent. A building that is significant because of its historic association(s) must retain sufficient physical integrity to convey such association(s).

(F) Courthouse—The principal building and its surrounding site which houses (or housed) county government offices and courts.

(G) (No change.)

(2) Procedures.

(A) (No change.)

(B) Notice from the commission to the commissioners court of the county. Written notice of the commission's determination regarding the historical significance of a courthouse for which work is proposed shall include comments pursuant to a review of the proposed work by the commission. Comments shall be made based on the *Secretary of the Interior's Standards for Historic Preservation Projects*, 1983 or latest edition, which follow in part:

(i)-(iii) (No change.)

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

Issued in Brownsville, Texas, on April 21, 1988.

TRD-8805003

Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: April 5, 1988

For further information, please call: (512) 463-6100.

## Chapter 21. Museum Services

### • 13 TAC §21.3

The Texas Historical Commission adopts an amendment to §21.3, without changes to the proposed text published in the March 4, 1988, issue of the *Texas Register* (13 TexReg 1126).

The amendment will follow through with the commission's plan to publish newly formatted, revised, and updated sections in pamphlet form for the benefit of the general public. The new pamphlet will be easy to read and understand, and will be readily available to the public at large.

The amendment will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

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 Brownsville, Texas, on April 21, 1988.

TRD-8805004

Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: March 4, 1988

For further information, please call: (512) 463-6100.

## Chapter 23. Publications

### • 13 TAC §23.2, §23.3

The Texas Historical Commission adopts amendments to §23.2 and §23.3, without changes to the proposed text published in the March 4, 1988, issue of the *Texas Register* (13 TexReg 11267).

The amendments will follow through with the commission's plan to publish newly formatted, revised, and updated sections in pam-

phlet form for the benefit of the general public. The new pamphlet will be easy to read and understand, and will be readily available to the public at large.

The amendments will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this (§442.005(q)).

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 Brownsville, Texas, on April 21, 1988.

TRD-8805005

Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: March 4, 1988

For further information, please call: (512) 463-6100.

## Chapter 25. Office of the State Archeologist

### • 13 TAC §§25.1, 25.4-25.7

The Texas Historical Commission adopts amendments to §§25.1, and 25.4-25.7, without changes to the proposed text published in the March 4, 1988, issue of the *Texas Register* (13 TexReg 1127).

The Texas Historical Commission adopts these previously published proposed sections to follow through with the commission's plan to publish newly formatted, revised, and updated sections in pamphlet form for the benefit of the general public. The new pamphlet will be easy to read and understand, and will be readily available to the public at large.

The adopted rules will alleviate any doubts, misconceptions, or confusion on the part of the general public concerning the practices and procedures of the commission. Requirements and guidelines used by commission members and staff in dealing with the general public are clearly stated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, Chapter 442, which provides the Texas Historical Commission with the authority to adopt rules as it considers proper for the effective administration of this chapter (§442.005(q)).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Brownsville, Texas, on April 21, 1988.

TRD-8805006

Curtis Tunnel  
Executive Director  
Texas Historical  
Commission

Effective date: June 6, 1988

Proposal publication date: March 4, 1988

For further information, please call: (512) 463-6100.

## TITLE 28. INSURANCE Part II. Industrial Accident Board

### Chapter 69. Medical Examination Orders

#### Subchapter A. Carrier's Choice of Health Care Provider

##### • 28 TAC §69.33

The Industrial Accident Board adopts new §69.33, without changes to the proposed text published in the April 1, 1988, issue of the *Texas Register* (13 TexReg 1522).

The board adopts this section, requiring a claimant's health care provider to release pertinent medical records to the carrier's choice of provider pursuant to a medical examination order, for the purpose of defining the rights and duties of providers and carriers under these circumstances.

This new section is added to the chapter regulating medical examination orders

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation 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 May 17, 1988.

TRD-8805064

Scott McAnally  
Executive Director  
Industrial Accident Board

Effective date: June 7, 1988

Proposal publication date: April 1, 1988

For further information, please call: (512) 448-7962

# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part XIV. Texas Board of Irrigators

### Chapter 423. Application for Registration

#### • 31 TAC §§423.10, 423.13, 423.22.

The Texas Board of Irrigators adopts amendments to §§423.10, 423.13, and 423.22, concerning application processing, determination of application for registration under reciprocity, and hearing on a rejected application, without changes to the proposed text published in the April 8, 1988, issue of the *Texas Register* (13 TexReg 1654).

The justification for the amendments is to bring the board's rules into substantial compliance with House Bill 5, §3, 70th Legislature, 1987.

The amendments will specify the board's time limitations in regard to application processing, determination of application for registration under reciprocity, and hearing on a rejected application.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Licensed Irrigators Act, Texas Civil Statutes, Article 8751, §7, which provide the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate the provisions of the Act.

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

Issued in Austin, Texas, on May 16, 1988.

TRD-8804980 Larry G. Persky  
Attorney, Legal Division  
Texas Water Commission

Effective date: June 8, 1988.

Proposal publication date: April 8, 1988.

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

#### • 31 TAC §423.59

The Texas Board of Irrigators adopts an amendment to §423.59, concerning written requests for examination results by applicants without changes to the proposed text published in the March 18, 1988, issue of the *Texas Register* (13 TexReg 1321).

The Board of Irrigators, at its January 1988 board meeting, ruled that if an applicant, who fails the examination, requests an analysis of his performance on the examination, he shall do so within 30 days after being notified of his examination results. The board was of the opinion that 30 days was a reasonable time period. An applicant who fails the examination must make his written request for his examination analysis within 30 days after the executive secretary has sent the applicant his examination results.

No comments were received regarding adoption of this amendment.

The amendment is proposed under the Licensed Irrigators Act, Article 8751, Texas Civil Statutes, §7, which provide the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate the provisions of the Act.

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

Issued in Austin, Texas, on May 16, 1988.

TRD-8804981 Larry G. Persky  
Attorney, Legal Division  
Texas Water Commission

Effective date: June 8, 1988.

Proposal publication date: March 18, 1988.

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

# TITLE 34. PUBLIC FINANCE

## Part I. Comptroller of Public Accounts

### Chapter 3. Tax Administration

#### Subchapter W. Amusement Machine Regulation

#### • 34 TAC §3.611

The Comptroller of Public Accounts adopts new §3.611, concerning refund or credit on licenses, registration certificates, or occupation tax permits with changes to the proposed text published in the March 11, 1988, issue of the *Texas Register* (13 TexReg 1218).

The new section establishes the conditions under which the comptroller will authorize a refund or credit under the Coin-Operated Services Law.

The changes consist of adding conditions under which the comptroller will authorize a refund or credit for tax permits purchased. The provisions allow for a refund or credit if the taxpayer makes a written request for a refund claiming tax permits were mistakenly purchased for nontaxable machines and returns the tax permits purchased in error, the taxpayer makes a request for a refund, claiming tax permits were mistakenly purchased because machine serial numbers were mistakenly duplicated on the machine inventory and returns the tax permits purchased in error, the taxpayer provides the comptroller with a sworn affidavit and documentation which supports that a machine serial number was incorrectly recorded on the machine inventory due to a clerical error, or the taxpayer provides the comptroller with a sworn affidavit and documentation from an independent third which supports that a machine was sold, stolen, or destroyed prior to the beginning of the calendar year for which the tax permits were purchased. The change appears in §3.611(a)(4)-(7).

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil

Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.611. *Refund on Licenses, Registration Certificates, or Occupation Tax Permits.*

(a) No refund or credit is allowed for the annual occupation tax after the tax permits have been issued for a machine registered with the comptroller unless:

(1) the taxpayer can prove reliance on incorrect information from the comptroller which caused it to incorrectly register a machine and purchase tax permits;

(2) the taxpayer makes a written request to the comptroller for credit or a refund prior to the beginning of the calendar year for which the tax permits were purchased;

(3) the taxpayer makes a written request to the comptroller for credit or a refund prior to issuance of the tax permits;

(4) the taxpayer makes a written request for a refund claiming tax permits were mistakenly purchased for nontaxable machines and returns the tax permits purchased in error;

(5) the taxpayer makes a request for a refund claiming tax permits were mistakenly purchased because machine serial numbers were mistakenly duplicated on the machine inventory and returns the tax permits purchased in error;

(6) the taxpayer provides the comptroller with a sworn affidavit and documentation which supports that a machine serial number was incorrectly recorded on the machine inventory due to a clerical error; or

(7) the taxpayer provides the comptroller with a sworn affidavit and documentation from an independent third party which supports that a machine was sold, stolen, or destroyed prior to the beginning of the calendar year for which the tax permits were purchased. If the taxpayer's only proof is the taxpayer's internal records, a credit or refund will not be allowed.

(b) No refund or credit is allowed for a license or registration certificate after the license or registration certificate has been issued for an applicant unless:

(1) the taxpayer can prove reliance on incorrect information from the comptroller which caused it to incorrectly purchase as license or registration certificate;

(2) the taxpayer makes a written request to the comptroller for credit or a refund prior to the beginning of the calendar year for which the tax permits were purchased; or

(3) the taxpayer makes a written

request to the comptroller for credit or a refund prior to issuance of a license or registration certificate.

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 May 16, 1988.

TRD-8804992      Bob Bullock  
                         Comptroller of Public  
                         Accounts

Effective date: June 6, 1988

Proposal publication date: March 11, 1988

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

◆            ◆            ◆  
**TITLE 40. SOCIAL  
SERVICES AND  
ASSISTANCE**

**Part I. Texas Department  
of Human Services**

**Chapter 29. Purchased Health  
Services**

**Subchapter B. Medicaid  
Eyeglass Program**

**• 40 TAC §§29.103 - 29.104**

The Texas Department of Human Services (DHS) adopts amendments to §§29.103 and 29.104, concerning reimbursement for optometric services and additional claims information requirements, without changes to the proposed text published in the March 22, 1988, issue of the *Texas Register* (13 Tex Reg 1380).

The justification for the amendments is to clarify the invoice requirements and patient-signature requirements necessary for electronic submittals of claims.

The sections will function by ensuring the timely reimbursement to providers for services rendered to Texas Medicaid recipients.

No comments were received regarding the adoption of the amendments.

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

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

Issued in Austin, Texas, on May 16, 1988.

TRD-8804978      Marlin W. Johnston  
                         Commissioner  
                         Texas Department of  
                         Human Services

Effective date: June 15, 1988.

Proposal publication date: March 22, 1988.

For further information, please call: (512) 463-3765.

**Chapter 33. Early and Periodic  
Screening, Diagnosis and  
Treatment**

**Subchapter T. EPSDT  
Eyeglass Program**

**40 TAC § 33.404, § 33.405**

The Texas Department of Human Services (DHS) adopts amendments to §§33.404 and 33.405, concerning optometric services, without changes to the proposed text published in the March 29, 1988, issue of the *Texas Register* (13 TexReg 1495).

The justification for the adoption is to clarify the invoice and patient signature requirements when a provider electronically submits his claims.

The sections will function to provide a clearer understanding of the program requirements.

No comments were received regarding the adoption of the amendments.

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

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 May 16, 1988.

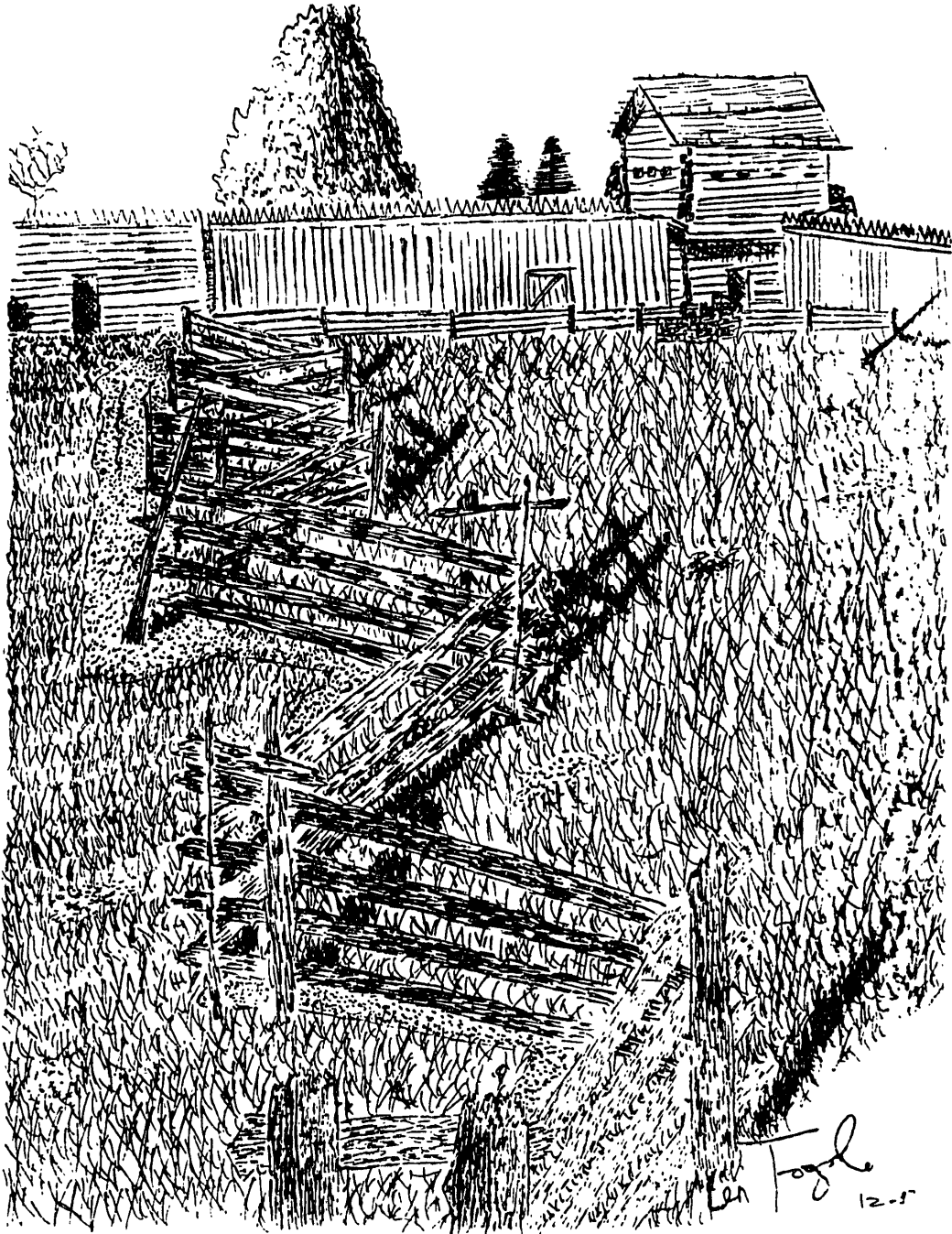
TRD-8804979      Marlin W. Johnston  
                         Commissioner  
                         Texas Department of  
                         Human Services

Effective date: June 15, 1988.

Proposal publication date: March 29, 1988.

For further information, please call: (512) 463-3765.

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Name: Ken Fogle  
Grade: 9  
School: Pemberton High, Marshall



# 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 billeting 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*.

## State Board of Barber Examiners

Tuesday, June 7, 1988, 8 a.m. Board members for the State Board of Barber Examiners will meet in Suite C-275, 1300 East Anderson Lane, Austin. According to the agenda, the board will welcome newly appointed board member; hear minutes of the previous meeting; interview out-of-state applicants; hear letters and reports by the executive director; and meet in executive session.

Contact: Jo King McCrorey, 1300 East Anderson Lane, Suite C-275, Austin, Texas 78752, (512) 835-2040.

Filed: May 18, 1988, 1:55 p.m.

TRD-8805091



## Texas School for the Deaf

Thursday, May 26, 1988. The Texas School for the Deaf will meet in the Administrative Building Conference Room, 1102 South Congress Avenue, Austin. Committees, times, and agendas follow.

4 p.m. The Governing Board Finance Subcommittee will review cash budget for fiscal year 1988.

Contact: Shiela O'Leary, P.O. Box 3538, Austin, Texas 78764, (512) 440-5331.

Filed: May 18, 1988, 10:43 a.m.

TRD-8805078

6:30 p.m. The Governing Board will approve minutes of the March 26, 1988, meeting; hear individuals from the audience wishing to make a report or comment; consider business requiring board action and for information purposes; and hear comments by members.

Contact: Shiela O'Leary, P.O. Box 3538, Austin, Texas 78764, (512) 440-5331.

Filed: May 18, 1988, 10:43 a.m.

TRD-8805079



## Texas State Board of Dental Examiners

Thursday, May 19, 1988, 8:30 a.m. The Texas State Board of Dental Examiners met in emergency session in the Dean's Conference Room, UT Dental Branch, 7703 Floyd Curl Drive, San Antonio. According to the agenda, the board added the following item to the agenda: executive session meeting with assistant attorney general Don Branson, regarding litigation suit. The emergency status was necessary as new developments in this litigation suit needed to be discussed with the board members.

Contact: William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: May 18, 1988, 10:28 a.m.

TRD-8805077



## Texas Education Agency

Various committees for Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Austin. Room numbers, dates, and agendas follow.

Friday, May 27, 1988, 10:30 a.m. The Price Differential Index Advisory Committee will meet in Room 1-110 to approve minutes; discuss turnover and teacher mobility data, and Huff and Zipf Models, and preliminary analyses for teacher salaries; and start work on other charges set by the State Board of Education.

Contact: Joe Wisnocki, 1701 North Congress Avenue, Room 3-101, Austin, Texas 78701, (512) 463-9704.

Filed: May 18, 1988, 9:30 a.m.

TRD-8805068

Thursday, June 23, 1988, 1 p.m. The State Board of Education, Committee for Personnel will meet in Room 1-104 to receive comment regarding State Board of Education Rule 19 TAC §§149.41-149.44, Appraisal of Certified Personnel (specifically the Texas Teacher Appraisal System [TTAS]); testimony must be limited to the

TTAS. Persons wishing to testify at the hearing must sign up before 1 p.m. on Friday, June 17, 1988, by calling Mrs. Cheryl Robinson at (512) 463-9328, TEA. Testimony will be limited to three minutes. This limit may be reduced depending on the number of individuals wishing to testify. Individuals testifying must furnish 25 written copies of the testimony to be given orally. Written statements may include additional materials that might not be given orally.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: May 18, 1988, 9:30 a.m.

TRD-8805069

Friday, June 24, 1988, 9 a.m. The State Board of Education, Committee for Personnel will meet in Room 1-104 to receive comment regarding State Board of Education Rule 19 TAC, Chapter 149, Subchapter D, Teacher Career Ladder. Testimony will be limited to the Teacher Career Ladder. Persons wishing to testify at the hearing must sign up before 1 p.m. on Friday, June 17, 1988, by calling Mrs. Cheryl Robinson at (512) 463-9328, TEA. Testimony will be limited to three minutes. This limit may be reduced depending on the number of individuals wishing to testify. Individuals testifying must furnish 25 written copies of the testimony to be given orally. Written statements may include additional materials that might not be given orally.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: May 18, 1988, 9:30 a.m.

TRD-8805070



## Texas Employment Commission

Wednesday, May 25, 1988, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission will consider prior meeting

notes; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 21; and set date of the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: May 17, 1988, 2:07 p.m.

TRD-8805025

### Governor's Committee on Water Resources

Thursday, May 26, 1988, 10 a.m. The Management Committee of the Governor's Committee on Water Resources will meet in Room 105, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee will present members, introduce guests, discuss committee responsibilities and other business, and schedule future meetings.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 18, 1988, 1:46 p.m.

TRD-8805095

### Governor's Office

Thursday, May 26, 1988, 9 a.m. The Select Committee on Education, Financial Considerations Subcommittee of the Governor's Office will meet in Room 103, John H. Reagan Building, Austin. According to the agenda, the committee will conduct facilities overview, other state practices, policy issues and alternatives systems for analyzing proposals.

Contact: Margaret La Montagne, Room 707, Sam Houston Building, 201 East Brazos Street, Austin, Texas 78711, (512) 463-1834.

Filed: May 18, 1988, 3:46 p.m.

TRD-8805120

Thursday-Friday, May 26-27, 1988, 9 a.m. The Select Committee on Education, Subcommittee on Student Performance for the Governor's Office, will meet in Room 107, John H. Reagan Building, Austin. According to the agenda, the committee will hold an examination of curriculum elements and instructional programs on Thursday. Invited testimony on higher level thinking skills and instructional strategies and programs for poor students and limited English proficient children. On Friday, the committee will conduct further examination of curriculum elements and instructional programs. Invited testimony related to language skill development and cognitive development.

Contact: Margaret La Montagne, Room 707, Sam Houston Building, 201 East Brazos Street, Austin, Texas 78711, (512) 463-1834.

Filed: May 18, 1988, 3:46 p.m.

TRD-8805119

### Health and Human Services Coordinating Council

Monday, May 23, 1988, 2:30 p.m. The Policy Planning Task Force for Health and Human Services Coordinating Council will meet in THHSCC 311-A East 14th Street, Austin, rescheduled from May 19, 1988. According to the agenda, the task force will approve minutes; discuss and summarize presentations from April 6, 1988, meeting; identify policy planning functions; discuss policy planning models; consider preliminary recommendations for Restructuring Committee; and discuss old and new business.

Contact: Carol Price, 311-A East 14th Street, Austin, Texas 78711, (512) 463-2195.

Filed: May 17, 1988, 10:43 a.m.

TRD-8805014

Wednesday, May 25, 1988, 8:30 a.m. The Children and Youth Services State Coordinating Committee for the Health and Human Services Coordinating Board will meet at 1100 West 49th Street, Austin. According to the agenda, the committee will review and approve of minutes of last meeting; consider old and new business; hear a report of the local level cooperation subcommittee, the joint funding subcommittee, the needs and resources subcommittee, and the tracking subcommittee; discuss memorandum of understanding; update on Restructuring Committee; and select the next meeting site.

Contact: Carol Price, 311-A East 14th Street, Austin, Texas 78711, (512) 463-2195.

Filed: May 17, 1988, 10:43 a.m.

TRD-8805013

### Texas Housing Agency

Wednesday, May 25, 1988. Various committees for the Texas Housing Agency will meet in Suite 300, THA Conference Room, 811 Barton Springs Road, Austin. Times and agendas follow.

8 a.m. The Program Operations Committee will consider and possibly act on conversion of bonds: long-term and short-term for July issuance, and 1988 bonding authority of \$92,000,000 to MCC program; discuss lender selection criteria used for allocation under single family programs; consider and possibly act on waiver of income guidelines

for THA borrower, Sharon Newmon; receive and discuss report on TICOR Mortgage Insurance Company; and consider and possibly act on resolution amending the OSS to allow the transfer of servicing to non-participants.

Contact: Patricia F. Broline, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: May 17, 1988, 4:28 p.m.

TRD-885056

The Texas Housing Agency will approve minutes of the February 24, 1988, and April 5, 1988, meetings; present MIS quarterly reports; consider and possibly act on re-funding for \$69,920,000 Texas Housing Agency residential development revenue bonds, 1982 series A. (loans to lenders) (Oakrun II Apartments), \$40,800,000 THA multi-family residential certificate of deposit revenue bonds series 1983A-1983E/7,900,000 series 1983A (Hamilton's Mark development), \$40,800,000 THA multi-family residential certificate of deposit revenue bonds series 1983A-1983E/\$13,400,000 series 1983B (Colins Landing development); consider and possibly act on request for quotation for computer conversion; review and possibly act on reports and recommendations completed at the Finance and Audit Committee meeting in Houston on May 18, 1988, to be presented to the general board; consider and possibly act on security doors for THA; review and possibly act on management consultants activity reports along with assessing the need for continued assistance; consider and possibly act on conversion of bonds: long-term and short-term for July issuance, and 1988 bonding authority of \$92,000,000 to MCC programs; consider and possibly act on designated public purpose project Association for Retarded Citizens (ARC) project in San Marcos; consider and possibly act on bond counsel and minority attorney's participation and association plan (review) and investment bankers; hear general activity report (update), A Coop Housing Interchange series; and approve multi-family co-managers.

Contact: Patricia F. Broline, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: May 17, 1988, 4:28 p.m.

TRD-885057

9 a.m. The Finance and Audit Committee will review and possibly act on reports and recommendations completed at the committee meeting in Houston on May 18, 1988, to be presented to the general board; consider and possibly act on security doors for THA; review and possibly act on management consultants activity reports along with assessing the need for continued assistance; consider and possibly act on conversion of bonds, long-term and short-term for July issuance, and 1988 bonding authority of \$92,000,000 to MCC program; consider and

possibly act on designated public purpose project Association for Retarded Citizens (ARC) project in San Marcos; consider and possibly act on bond counsel and minority attorney's participation and association plan (review); consider and possibly act on investment bankers; and hear general activity report (update)-A Coop Open Housing Interchange series.

Contact: Patricia F. Broline, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: May 17, 1988, 4:28 p.m.

TRD-885055

## State Board of Insurance

Wednesday, May 25, 1988, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider extension of emergency effectiveness of amendment to 28 TAC §1.36; final adoption of 28 TAC §§1.406, 15.28, and 15.101, and amendment of 28 TAC §5.2003; board orders on several different matters as itemized on the complete agenda; fire marshal: personnel; litigation; statistical and rate development: personnel; research and information services: personnel; discuss Articles 21.49-12 and 21.49-3C, §2a, Insurance Code; dissolution of Market Assistance Program for commercial liability insurance; plan of operation for Market Assistance Program for liability insurance; commissioner: personnel, litigation; proposed 28 TAC §5. 6105 concerning inspections of accident prevention services; and discuss board's position on 7 TAC §§3.101-3.105.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: May 17, 1988, 2:02 p.m.

TRD-8805036

## Texas Juvenile Probation Commission

Friday, June 10, 1988, 10 a.m. The Board of the Texas Juvenile Probation Commission will meet at 2015 South IH 35, Austin. According to the agenda, the board will call order; approve minutes of the March 18, 1988, meeting; demonstrate caseworker/juvenile tracking and caseload management system; hear directors report; report on interim study committees; approve fiscal year 1988 administrative budget transfers; approve of fiscal year 1989 administrative budget, 1989 population projections and funding formula allocation, and first submission of fiscal year 1990-1991 budget request; approve discretionary grants; discuss memorandum of understanding; and hear public comment. Members of

the public are invited to attend this meeting and speak on any issue under the jurisdiction of the commission.

Contact: Bill Anderson, P.O. Box 13547, Austin, Texas 78711.

Filed: May 19, 1988, 9:06 a.m.

TRD-8805129

## Legislative Education Board

Wednesday, June 8, 1988, 9:30 a.m. The Legislative Education Board will meet in Room 310, Old Supreme Courtroom, State Capitol, Austin. According to the agenda, the board will discuss need for funding for coordinated vocational academic education in seventh and eighth grades; hear report from the commission of education on the Texas book depository and the status of implementation of Senate Bill 994; hear a report on the Select Committee on Education; and a presentation by the Education Research Center.

Contact: Daryl Dorcy, Room 244, State Capitol, Austin, Texas 78705, (512) 463-1000.

Filed: May 17, 1988, 1:37 p.m.

TRD-8805017

## Texas Mohair Producers Board

Wednesday, June 1, 1988, 2 p.m. The Texas Department of Agriculture for Texas Mohair Producers Board will meet in the Stephen F. Austin South Room, Holiday Inn, 441 Rio Concho Drive, San Angelo. According to the agenda, the department will approve minutes, hear financial reports, and consider old and new business.

Contact: Brain J. May, P.O. Box 5337, San Angelo, Texas 76902, (915) 655-3161.

Filed: May 19, 1988, 9:02 a.m.

TRD-8805130

## Texas Board of Private Investigators and Private Security Agencies

Thursday, May 19, 1988, 9:30 a.m. The Texas Board of Private Investigators and Private Security Agencies met in emergency session for an agenda revision in Room 109, John H. Reagan Building, Austin. According to the agenda, the board discussed and possibly approved non-mandatory training. The emergency status was necessary as this item was left off the original agenda.

Contact: Clema D. Sanders, 313 East Anderson Lane, Austin, Texas 78758.

Filed: May 17, 1988, 4:31 p.m.

TRD-8805058

## Texas State Board of Public Accountancy

The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Tuesday, May 24, 1988, 9:30 a.m. The board will meet in emergency session to discuss complaint #87-07-29L. The emergency status was necessary because only time panel can meet with complainant.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: May 17, 1988, 3:05 p.m.

TRD-8805039

Wednesday, May 25, 1988, 9:30 a.m. The board will discuss complaints 83-08-04L, 84-07-08L, 84-09-13L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: May 17, 1988, 3:05 p.m.

TRD-8805037

Thursday, May 26, 1988, 9:30 a.m. The board will hold a hearing on individuals who practiced without a license due to late payment.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: May 17, 1988, 3:05 p.m.

TRD-8805038

## Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, May 25, 1988, 4:30 p.m. The Hearings Division will consider Docket 78757-Staff proposal to begin rulemaking concerning life-line rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 17, 1988, 4:31 p.m.

TRD-8805059

Wednesday, May 25, 1988, 4:30 p.m. The Hearings Division will consider Southwestern Bell Telephone Company's appeal of examiner's order #3 in Docket 8030-Application of Southwestern Bell Telephone Company for revisions to 976 tariff.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 17, 1988, 3:09 p.m.

TRD-8805041

Friday, May 27, 1988, 10 a.m. The Hearings Division will consider Docket 8116-Application of San Patricio Electric Cooperative, Inc. for authority to implement a temporary reduction in the small general service rate.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 18, 1988, 1:52 p.m.

TRD-8805093

Monday, August 15, 1988, 10 a.m. The Hearings Division will consider Docket 8097-Application of Lighthouse Electric Cooperative, Inc. for authority to change rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 17, 1988, 3:09 p.m.

TRD-8805042

## State Purchasing and General Services Commission

Wednesday, May 25, 1988, 9 a.m. The State Purchasing and General Services Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will meet in executive session to receive report on and advice from counsel regarding contemplated litigation between the commission and Meyerson Construction Company, relating to Project 86-005C-303, renovation of the TEA Building.

Contact: John R. Neel, 111 East 17th Street, Austin, Texas 78711, (512) 463-3446.

Filed: May 17, 1988, 2:30 p.m.

TRD-8805034

Thursday, May 26, 1988, 9 a.m. The Commission of the State Purchasing and General Services Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will meet in executive session to receive report on and advise from counsel regarding contemplated litigation between the commission and Meyerson Construction Company relating to Project 86-005C-303, renovation of the TEA building.

Contact: John R. Neel, 111 East 17th Street, Austin, Texas 78711, (512) 463-3446.

Filed: May 17, 1988, 2:30 p.m.

TRD-8805124

## Texas Senate

Tuesday, May 31, 1988, 10 a.m. The Health and Human Services Committee for the Texas Senate will meet in the Senate Chamber of the State Capitol, Austin. According to the agenda, the committee will conduct a public hearing on the needs of medically fragile and chronically ill children and their families as part of the interim study on the needs of medically fragile and chronically ill children and their families; hear presentations and public testimony. Written comments may be mailed to the committee at P.O. Box 12068, Austin, Texas 78711.

Contact: Cris Cunningham, Suite 1007, Sam Houston Building, Austin, Texas 78701, (512) 460-0360.

Filed: May 18, 1988, 2:53 p.m.

TRD-8805096

## Texas A&M University System, Board of Regents

Sunday, May 22, 1988. Various committees for Texas A&M University, Board of Regents met in the MSC Annex, Texas A&M University, College Station. Times and agendas follow.

1 p.m. The Planning and Building Committee canceled unexpended balances of appropriations; hear a report of contract actions by the chancellor, a report of construction project appropriations/authorizations by the chancellor, and report of contract actions by the presidents or deputy chancellor; initiated major construction projects; acted on bids, appropriations for designs; accepted Riverside Campus master plan for planning purposes; appropriated replacement funds for the parking garage; and additional appropriation to cleanup a PCB transformer storage site.

Contact: Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: May 18, 1988, 10:49 a.m.

TRD-8805084

2:35 p.m., and reconvened at 3 p.m. on Monday, May 23, 1988. The Board of Regents considered construction matters, land acquisitions, emeritus titles, easements, resolutions, revolving fund accounts, and degree program proposals; established quasi-endowment; fees, board, deposits, and rates; mission statement; vending contract; gifts, grants, loans and bequests; budget and fiscal transfers, salary increases and new positions; appropriations from unappropriated sources; 1988-1989 operating budgets

and 1988-1989 budgets of athletic councils; appropriations of funds; sale of promissory note, surplus real estate, oil, gas, and sulphur leases; holiday schedules; developed system telecommunications plan, policy statement on education business activities, and considered appointments and promotions, terminations, academic tenure, and appointments of personnel; named facilities; discussed land and investment matters; litigation; guidelines for 1990-1991 legislative and governor's budget request for appropriations; received information on the South Texas Higher Education Legislative Study Committee and the Railroad Relocation Project; and considered any and all things leading to the selection of a president at the university. In an agenda revision, the committee approved permanent university fund bonds, series 1988.

Contact: Vickie Burt, Texas A&M University, College Station, Texas 77843, (409) 845-9603.

Filed: May 18, 1988, 10:49 a.m.

TRD-8805083, 8805122

2:40 p.m., and reconvened on Monday, May 23, 1988, at 9:30 a.m. The Executive Committee accepted gifts, grants, loans and bequests; considered budget and fiscal transfers, salary increases, and new positions, appropriations from unappropriated sources; approved 1988-1989 operating budgets, 1988-1989 budgets of the athletic councils, appropriation of funds; authorized land acquisitions, easement, sale of promissory note, sale of surplus real estate, sale of oil, gas, and sulphur leases; approved holiday schedules; authorize system communications plan; approved policy statement on education business activities, appointments and promotions, terminations, and academic tenure; appointed personnel; named facilities; considered land and investment matters, litigation, guidelines for 1990-1991 legislative and governor's budget request for appropriations; received information regarding the South Texas Higher Education Legislative Study Committee and the Railroad Relocation Project; and considered any and all things leading to the selection of a president for the university. In an agenda revision, the committee approved permanent university fund bonds, series 1988.

Contact: Vickie Burt, Texas A&M University, College Station, Texas 77843, (409) 845-9603.

Filed: May 18, 1988, 10:49 a.m.

TRD-8805081, 8805121

3:30 p.m. The Committee for Service Units authorized exercise option to purchase land under lease at Weslaco; granted emeritus titles; authorized right-of-way easement; adopted resolution to commend the firefighters of the Big Country Fire; and established revolving fund accounts.

Contact: Vickie Burt, Texas A&M University, College Station, Texas 77843, (409)

845-9603.

Filed: May 18, 1988, 10:49 a.m.

TRD-8805082

4:10 p.m. The Committee for Academic Campuses approved degree program proposal request; authorized establishment for a quasi-endowment, fees, board, deposits, and rates; granted emeritus titles; approved new mission statement; and confirmed vending contract.

Contact: Vickie Burt, Texas A&M University, College Station, Texas 77843, (409) 845-9603.

Filed: May 18, 1988, 10:49 a.m.

TRD-8805080

## Texas Water Commission

Tuesday, May 31, 1988, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider water district bond issues, use of surplus funds, approval of a fire plan, amendment to district sewage service contract, certificates of convenience and necessity, water quality minor amendments, and proposed water right applications.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: May 18, 1988, 3:51 p.m.

TRD-8805125

Tuesday, June 14, 1988, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the office will conduct a public hearing regarding the application for an amendment to certificate of convenience and necessity 10066 filed by Lavon Water Supply Corporation, Docket 7614-C.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 18, 1988, 11:40 a.m.

TRD-8805088

## Joint Select Committee on Workers' Compensation

Friday, June 3, 1988, 10 a.m. The Joint Select Committee on Workers' Compensation will meet in the School of Social Work Auditorium, 211 South Cooper, University of Texas at Arlington, Arlington. According to the agenda, the committee will call order-Senator Glasgow and Representative R. Smith, hear public testimony, and consider committee business.

Contact: Bobby Gierisch, Room 224, John

H. Reagan Building, Austin, Texas 78711, (512) 463-0814.

Filed: May 17, 1988, 3:11 p.m.

TRD-8805040

## Texas Youth Commission

Thursday, May 26, 1988, 9 a.m. The Board Budget Committee for the Texas Youth Commission will meet at 2121 Panoramic Circle, Dallas. According to the agenda, the committee will summarize staff budget recommendations.

Contact: Ron Jackson, P.O. Box 9999, Austin, Texas 78766.

Filed: May 18, 1988, 2 p.m.

TRD-8805089

## Regional Meetings

### Meetings Filed May 17, 1988

The Hockley County Appraisal District, Board of Directors, met in emergency session in the Boardroom, 1103-C Houston Street, Levelland, on May 17, 1988, at 2 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336.

The Sabine River Authority of Texas, Board of Directors, will meet in the Shelby County Savings and Loan Building, Center, on May 24, 1988, at 10 a. m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200.

The San Patricio County Appraisal District, Appraisal Review Board will meet at 1146 East Market Street, Sinton, on June 1, 1988, at 9 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

### Meetings Filed May 18, 1988

The Bexar Appraisal District, Board of Directors, will meet at 535 South Main, San Antonio, on May 24, 1988, at 5 p.m. The Appraisal Review Board will meet at the same location on May 27, 1988, at 9 a.m., and again on June 1-3, 6-9, 13-17, 20-23, and 27-30, 1988, at 8:30 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Central Plains Mental Health and Mental Retardation Center, Board of Trustees, will meet at 206 South Columbia, Plainview, on May 26, 1988, 6:30 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Coryell County Appraisal District, Appraisal Review Board, will meet in the

District Office, 113 North Seventh Street, Gatesville, on May 25, 1988, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Dallas Area Rapid Transit, Planning and Development Design Principles Committee, met in emergency session at 601 Pacific Avenue, Dallas, on May 20, 1988, at 2 p.m. Information may be obtained from Sylvia Villarreal, (214) 658-6237.

The Education Service Center, Region II, Board of Directors, will meet in the Administrative Conference Room, 209 North Water, Corpus Christi, on June 14, 1988, at 6:30 p.m. Information may be obtained from Gerald V. Cook.

The Education Service Center, Region XII, Administrative Board of Directors, will meet at 401 IH 35, Waco, on May 26, 1988, at 7:30 p.m. Information may be obtained from Weldon O. Mills, P.O. Box 1249, Waco, Texas 76703-1249, (817) 756-7494.

The Jack County Appraisal District, Board of Directors, will meet at the Los Creek Office Building, 216-D South Main, Jacksboro, on May 24, 1988, at 7 p.m. Information may be obtained from Doris G. Ray or Linda Williams, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Jasper County Appraisal District, Appraisal Review Board, will meet in the Courthouse Annex, 121 North Austin, Jasper, on June 9, 1988, at 9 a. m. Information may be obtained from David W. Luther, County Courthouse Annex, Jasper, Texas 75951, (409) 384-2544.

The Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, on May 25, 1988, 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Limestone County Appraisal District, Appraisal Review Board, will meet in the Appraisal District Room, Basement, Limestone County Courthouse, Groesbeck, on June 6-10, 1988, at 9 a.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met at 3801 Avenue J, Lubbock, on May 23, 1988, at 11:30 a.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The Pecan Valley Mental Health and Mental Retardation Region, Board of Trustees, will meet at the Church of Christ, Highway 377 South, Pecan Valley MHMR Clinic, 104 Charles Street, Granbury, on May 25, 1988, at 8 a. m. Information may be obtained from Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-

7806.

The San Jacinto River Authority, Board of Directors, will meet in the States Room, Woodlands Inn and Country Club, The Woodlands, on May 25, 1988, at noon. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111.

The Wise County Appraisal District, Appraisal Review Board, will meet at 206 South State Street, Decatur, on May 27, 1988, at 9:30 a.m. Information may be obtained from Freddie Dempsey, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.



### Meetings Filed May 19, 1988

The Colorado River Municipal Water District, Board of Directors, will meet at 400 East 24th Street, Big Spring, on May 25, 1988, at 10 a.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341.

The Mental Health and Mental Retardation Center of East Texas, Board of Trustees, will meet in the Boardroom, 2323 West Front Street, Tyler, on May 26, 1988, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Middle Rio Grande Development Council, Texas Review and Comment Sys-

tem (TRACS), will meet in City Council Chambers, Corner of Main and Getty Street, Uvalde, on May 26, 1988, at 10:30 a.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The North Central Texas Council of Governments, Executive Board, will meet on the Second Floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on May 26, 1988, 12:45 p.m. Information may be obtained from Edwina J. Shires, P. O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.



# 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 Notice of Applications

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On May 16, 1988, the banking commissioner received an application to acquire control of International Mortgage and Trust Company, Houston, by Gerald Lynn Nunez and William Marvin Knapp, both of Houston.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on May 16, 1988.

TRD-8805012 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: May 17, 1988

For further information, please call (512) 479-1200

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Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On April 22, 1988, the banking commissioner received an application to acquire control of the First Colony Bank, The Colony, by Theo B. Lamb, Bonita, California; Gerald Gleason, Chicago Illinois; and Paul Tidwell, Carrollton.

On May 16, 1988, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas

78705, (512) 479-1200.

Issued in Austin, Texas on May 16, 1988.

TRD-8805019 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: May 17, 1988

For further information, please call (512) 479-1200

## State Banking Board Notice of Hearing

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The hearing officer of the State Banking Board will conduct a hearing on Monday, June 13, 1988, at 9 a.m. at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Deposit Guaranty Bank, Dallas.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on May 12, 1988.

TRD-8804977 William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: May 16, 1988

For further information, please call (512) 479-1200

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

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The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer<sup>(3)</sup>/Agri- cultural/Commercial<sup>(4)</sup> thru \$250,000</u>	<u>Commercial<sup>(4)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/23/88-05/29/88	18.00%	18.00%
Monthly Rate Art. 1.04(c) <sup>(1)</sup>	05/01/88-05/31/88	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 <sup>(3)</sup>	04/01/88-06/30/88	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) <sup>(3)</sup>	04/01/88-06/30/88	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) <sup>(2)</sup>	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 <sup>(3)</sup>	04/01/88-06/30/88	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	04/01/88-06/30/88	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	06/01/88-06/30/88	10.00%	10.00%

- (1) For variable rate commercial transactions only.  
(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.  
(3) Credit for personal, family or household use.  
(4) Credit for business, commercial, investment or other similar purpose.



Issued in Austin, Texas, on May 16, 1988.

TRD-8805018 Al Endsley  
Consumer Credit Commissioner

Filed: May 17, 1988

For further information, please call (512) 479-1280

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**Texas Education Agency**  
**Request for Applications**

The Texas Education Agency is requesting applications from public education agencies, education service centers, colleges, and universities for the following seven adult education special project grants funded through The Adult Education Act, Public Law 91-230, §310.

**RFA-1: English Literacy for Speakers of Other Languages Including Teacher Training.** This project is designed as a three-year project provided the contractor meets the specified objectives of each project year. The first year of the project will focus on: (1) statewide preservice and inservice training for teachers, teacher aides, and volunteers in instructional methodologies; (2) statewide preservice and inservice training for teachers involved in teaching citizenship to eligible legalized alien adults; and (3) initial curriculum development in English literacy for limited English proficient adults who possess no literacy in their native language.

**RFA-2: Adult Literacy and Math Curriculum Development and Teacher Training.** This project is designed as a three-year project provided the contractor meets the specified objectives of each project year. The first project year will focus on: (1) statewide preservice and inservice training in instructional methodologies for teaching basic literacy and math skills to educationally disadvantaged [but English-proficient] adults at equivalent grade levels 0-4; (2) effective strategies for recruitment of educationally disadvantaged adults; (3) curriculum development in basic literacy and math.

**RFA-3: A Partnership Model for Family English Literacy.** Family literacy programs attempt to break the cycle of intergenerational illiteracy by focusing on the entire family unit. This project will develop and implement a family literacy model program for limited English proficient parents who have little or no literacy in their native language and will be focused on improving literacy behaviors (including parenting skills) in the home which are conducive to children's school achievement.

**RFA-4: A Partnership Model for Family Literacy.** This project will develop and implement a family literacy (including math) model program focused on improving literacy behaviors in the home where adults, although English proficient, lack basic skills. Implementation of the adult portion of the model will include parenting skills including instruction on how undereducated parents can help their children learn as well as basic reading, writing, and math skills. The instruction will focus on: (1) educationally disadvantaged adults who function at equivalent grade levels 0-4; and (2) adults who function at equivalent grade levels 5-8.

**RFA-5: General Educational Development Teacher Training and Curriculum Development.** In 1988, adult education programs will implement major changes in the general educational development preparation curriculum, including an emphasis on higher order cognitive skills in the interpreting literature and the arts, science, and social

studies tests, a writing sample added to the writing skills test, and an application/problem solving emphasis in the mathematics test. This project will provide support to local programs in that implementation by focusing on: (1) preservice and inservice training available statewide; and, (2) General Educational Development curriculum development incorporating current issues (e.g., Acquired Immunity Deficiency Syndrome; drug abuse and prevention, the changing labor market) and curriculum for subpopulations (e.g., parents, out-of-school youth needing pre-employment skills).

**RFA-6: Applications of Television Technology to Adult Education Instruction.** This project will extend the availability of adult education instruction through television technology for persons in the target population who are not able to or who are not willing to take advantage of the traditional adult education classroom and learning center approaches.

**RFA-7: Adult Education Clearinghouse and Resource Center.** This project will establish a clearinghouse and systems for collecting and disseminating adult education information in at least the areas of financial resources, program development, research, curriculum, and successful practices. In addition, the project will function as a statewide adult literacy research center, gathering and disseminating information about what works in adult literacy (educationally disadvantaged adults functioning on grade level equivalents 0-4) for both limited English proficient and English proficient populations.

Application packets containing the application form and the project specifications may be obtained from the Document Control Center, Texas Education Agency, 1701 North Congress Avenue, Room 6-108, Austin, Texas 78701, (512) 463-9304. Completed applications must be returned to the Document Control Center and be received on or before June 24, 1988.

Applications for adult education special projects will be evaluated on the following criteria: (1) objectives to be accomplished; (2) procedures for accomplishing objectives; (3) specific results to be produced; (4) potential use of results; (5) personnel qualifications and experience, including a statement as to accomplishments and success on previous special projects; (6) project evaluation plan; and (7) cost to include cost for equipment, materials, and supplies.

For additional information regarding project specifications, contact Ms. Evelyn Yap Curtis of the Division of Adult and Community Education Programs at the Texas Education Agency, (512) 463-9132.

Issued in Austin, Texas on May 16, 1988.

TRD-8805067 W. N. Kirby  
Commissioner of Education

Filed: May 18, 1988

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

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**Governor's Office of Budget and  
Planning**

**Meeting of the Public-Private Partnership  
Advisory Panel**

The second meeting of the Public-Private Partnership Advisory Panel will be held June 7, 1988, from 10 a.m. to 4 p.m., at the Governor's Energy Management Center (GEMC), in Room 412 of the Sam Houston Building,

located at 201 East 14th Street in Austin. This panel has been convened to provide expert advice to the governor's office, concerning the energy related needs of the non-profit sector and potential private sector partnerships that might be established to address these needs. Members of the panel will discuss possible criteria for evaluating proposals submitted for funding with oil overcharge funds in accordance with of Senate Bill 33, §21, passed by the Second Called Session of the 70th Texas Legislature. The panel will assist GEMC in developing the structure and delivery mechanisms of potential programs. For further information, contact Douglas Key at the Energy Management Center, (512) 463-1931.

Issued in Austin, Texas on May 17, 1988.

TRD-8805024      Robert E. Davis  
Director  
Governor's Office of Budget and Planning

Filed: May 17, 1988

For further information, please call (512) 463-1931

## Request for Proposals

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

The Governor's Office of Budget and Planning invites proposals from qualified firms, institutions of higher education, or individuals to provide engineering reviews for technical assistance (TA) reports submitted to the Institutional Conservation Program (ICP) in support of capital retrofit grant applications. TA reports, which are prepared according to a prescribed format, analyze recommended capital retrofit energy efficiency projects for institutional buildings. Approximately 40 TA reports will be reviewed by the contractor chosen for the project.

Current contractor for this project is Kinsman and Associates. Unless a better offer is submitted to provide this service, our office intends to negotiate a contract with this firm.

The contractor selected will possess a comprehensive knowledge of energy-using systems for institutional buildings, energy auditing, and energy savings calculation methodologies; a broad understanding of the Institutional Conservation Program; and a specific understanding of the federal and state regulations governing the preparation of the TA report.

The technical review of each TA report will include an evaluation of the report for technical accuracy, soundness of engineering principles, and project cost estimates. Each report will then be assigned a technical review score based on established criteria. The contractor will also be expected to contact applicants as necessary to resolve technical problems and be available to ICP staff for consultation on problems as they develop.

Each proposal will be judged according to the proposer's ability to assign experienced and qualified personnel to the project; the proposer's previous work, and experience relative to this type of project; the proposer's ability to provide objective assessments of the studies to be evaluated (firms currently involved in preparing a significant number of TA reports for the current cycle are not encouraged to apply); the proposed method of evaluation; and the proposer's ability to complete the review in a timely manner. Proposals should address each of the preceding criteria in the order listed.

The technical review period for this program cycle will extend from July 1, 1988-October 1, 1988. Final selection

of a contractor will be based on the recommendations of a review committee. If, upon conclusion of the evaluation of proposals received pursuant to this solicitation, two or more proposals are ranked so closely that a final selection cannot reasonably be made, the review committee may request each proposer to provide additional information. Such information may include written materials not specified in this solicitation. Proposers may also be requested to meet with ICP staff in Austin to review or clarify their proposals prior to the final selection of a contractor.

Contractor selection will be made on or before June 24, 1988, and the contract period will extend from the date of signing through October 31, 1988.

Further information concerning this project may be obtained by contacting Mel Roberts, Manager, Institutional Programs, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Five copies of the proposal should be sent to Mel Roberts at the previously listed address. Proposals should be sent by registered mail or by courier and must arrive no later than 5 p.m. on June 10, 1988. Proposals received after this time will not be considered.

Issued in Austin, Texas on May 17, 1988.

TRD-8805023      Robert E. Davis  
Director  
Governor's Office of Budget and Planning

Filed: May 17, 1988

For further information, please call (512) 463-1817

## Texas Department of Health Public Hearing

The department will conduct a public hearing on the following municipal solid waste disposal site:

Notice is hereby given that Atascosita Development Corporation, a wholly owned subsidiary of Waste Management of North America, Inc., presently holds Solid Waste Permit Number 1307 as heretofore issued by the Texas Department of Health for the operation of a Type I municipal solid waste site located adjacent to and on the south side of Atascosita Road, approximately three miles east of United States Highway 59, in Harris County.

The said permit holder has now filed with the Texas Department of Health an application to amend the aforesaid permit as follows: To add a Type IX Gas Recovery System to the existing 120.859-acre municipal solid waste disposal site. No additional acreage is being considered. The gas that is being naturally produced in the landfill by the decomposition of organic material is to be used for the generation of electricity.

Pursuant to the provisions of the Texas Solid Waste Disposal Act (Texas Civil Statutes, Article 4477-7), the Texas Department of Health Municipal Solid Waste Management Regulations, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, a prehearing conference on the aforesaid application to amend the said permit will be held at Airport Hilton Inn, 500 North Belt East, Houston, Texas, at 9:30 a.m. on Wednesday, June 15, 1988. The purpose of the hearing is to receive evidence for and against the designation of any person as a person affected, i.e. party status, and to determine discovery procedures if any are necessary. Pursuant to the same authorities as cited above, a public hearing on the aforesaid application to amend the said permit will be held at Airport Hilton Inn, 500 North

Belt East, Houston, at 9:30 a.m. on Saturday, August 13, 1988.

The purpose of the hearing is to receive evidence for and against the issuance of a permit for the aforesaid application. The hearing will be conducted and the final decision will be rendered in accordance with the applicable rules contained in the department's said regulations, including all changes in effect as of December 1986. All parties having an interest in this matter shall have the right to appear at the hearing, present evidence and be represented by counsel. Pursuant to Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures, the cost of a written hearing transcript may be assessed against one or more of the designated parties.

A copy of the complete application may be reviewed at the Texas Department of Health, 1100 West 49th Street, Austin, Texas, or at the Department's Public Health Region 4 office located at 10500 Forum Place, Suite 200, Houston, Texas 77036, (713) 995-1112.

Issued in Austin, Texas on May 18, 1988.

TRD-8805071      Robert A. MacLean  
Deputy Commissioner for Professional  
Services  
Texas Department of Health

Filed: May 18, 1988

For further information, please call (512) 458-7271.



## Texas Higher Education Coordinating Board

### Notice of Meeting

The Part-time Faculty Study Committee will meet on Wednesday, June 1, 1988, beginning at 10:30 a.m. The meeting will be held in the Coordinating Board Room 209, at 200 Riverside Drive in Austin. For additional information contact the Texas Academic Skills Program (TASP) office at the Coordinating Board at (512) 462-6485.

Issued in Austin, Texas on May 16, 1988.

TRD-8805066      James McWhorter  
Assistant Commissioner for Planning and  
Administration  
Texas Higher Education Coordinating Board

Filed: May 18, 1988

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



## Texas Real Estate Commission

### Correction of Error

The Texas Real Estate Commission submitted a proposed new section which contained an error as published in the May 17, 1988, issue of the *Texas Register* (13 TexReg 2306).

In §531.17 paragraph (b)(10) should read: "(10) include a signed certification similar in content to the following:

"I certify that, to the best of knowledge and belief:

--The statements of fact contained in this report are true and correct.

--The reported analyses opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

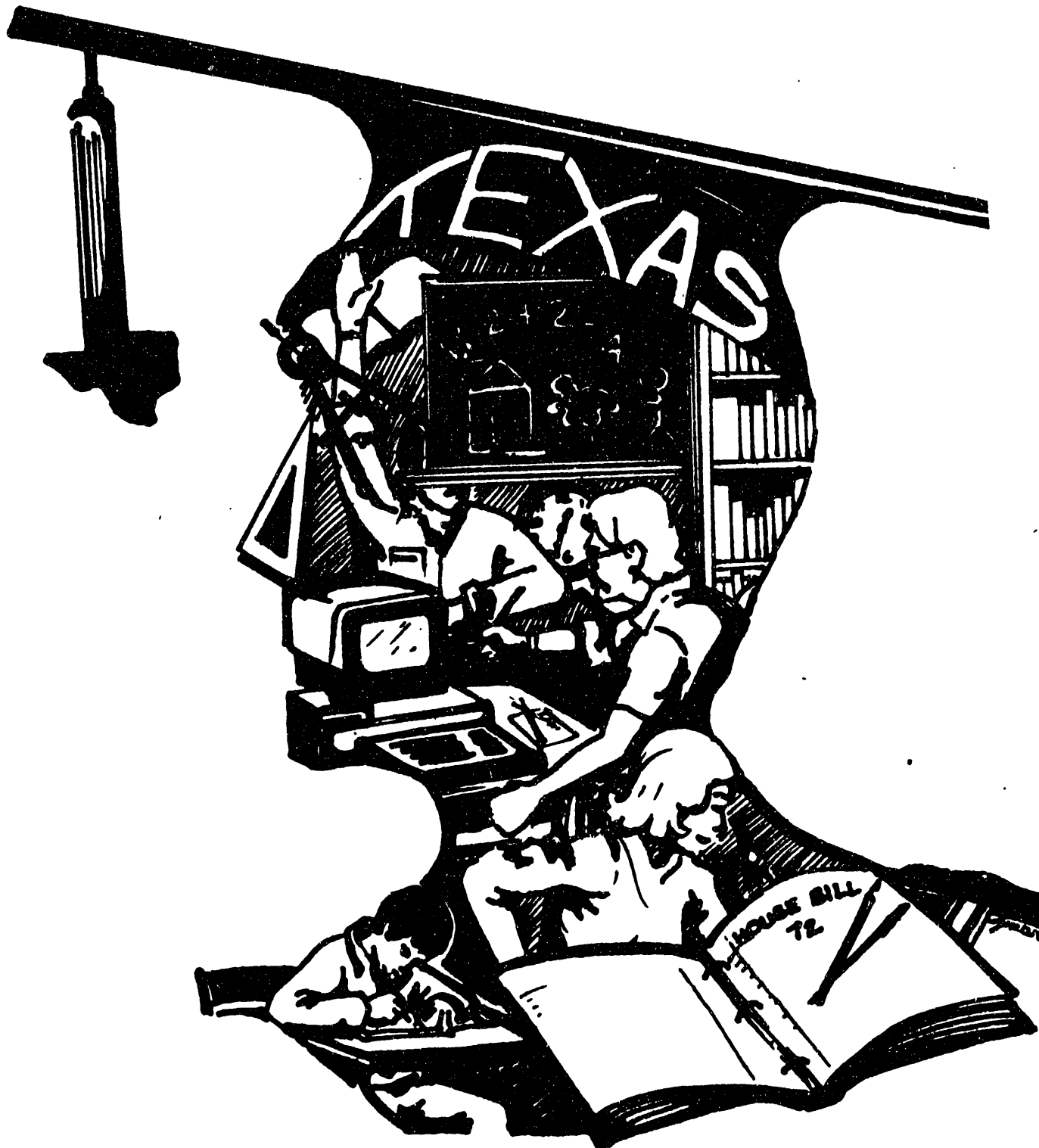
--I have no (or the specified) present or prospective interest in the property (if any) that is the subject of this report, and I have no (or the specified) personal interest or bias with respect to the parties involved.

--My compensation is not (or is) contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report. (If the compensation is contingent, the basis of such contingency must be explained.)

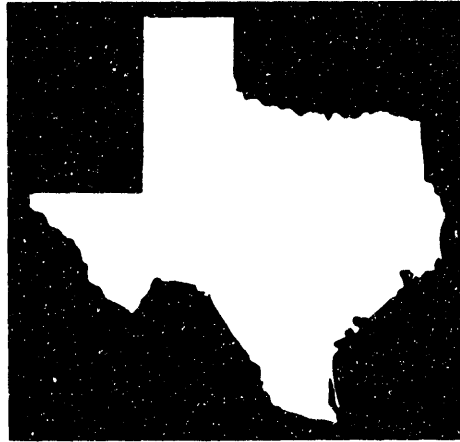
--My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Rules of the Texas Real Estate Commission.

--I have (or have not) made a personal inspection of the property (if any) that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the property.)

--No one provided significant professional assistance to the person signing this report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)"



Name: Juan Martinez III  
Grade: 12  
School: Sam Houston High, Houston



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