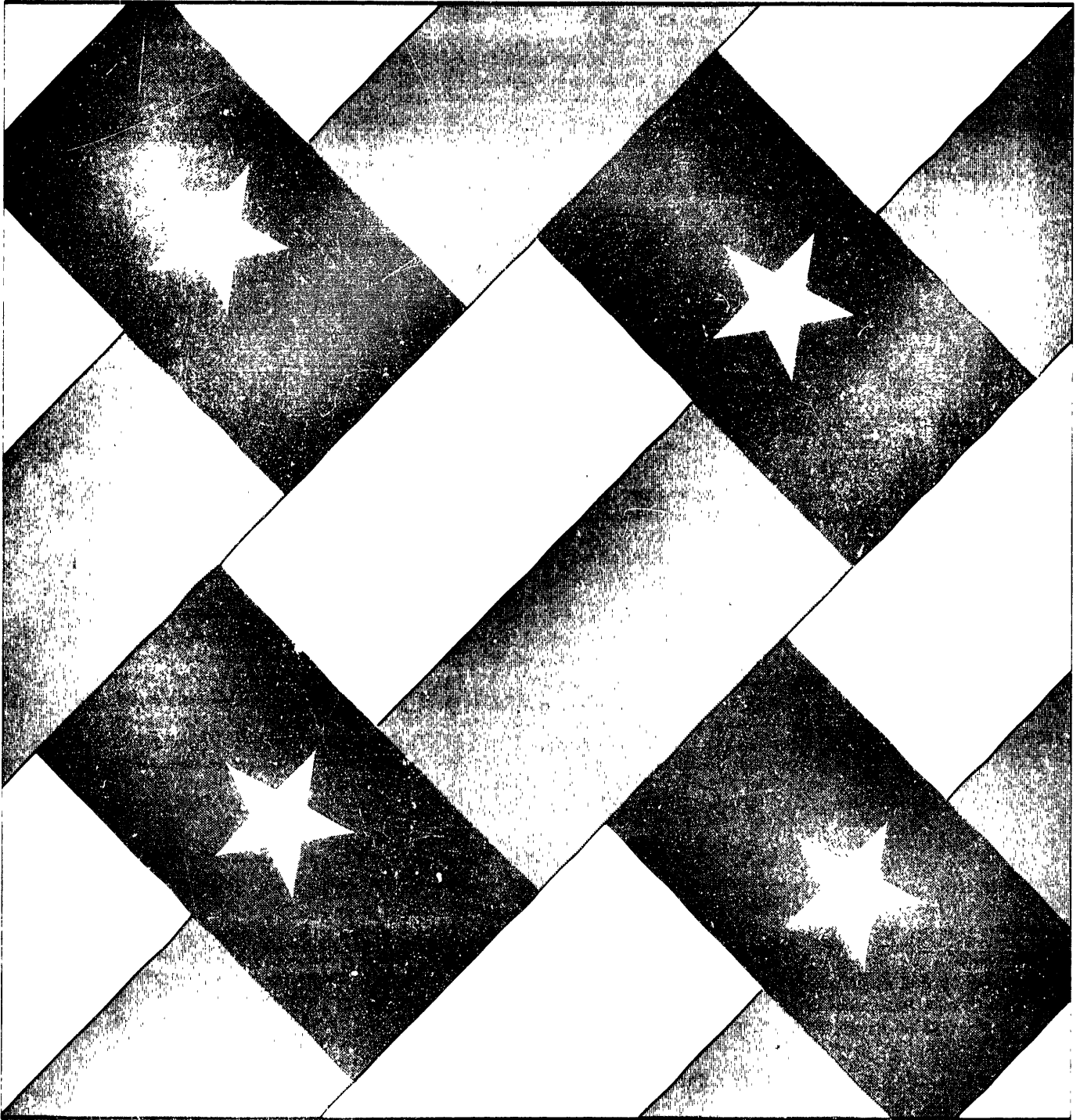


Texas Register

Volume 12, Number 5, January 20, 1987

Pages 207-259



Highlights

The **Texas Education Agency** proposes an amendment concerning educational programs for gifted and talented students. Proposed date of adoption - March 14
page 244

The **State Board of Insurance** proposes an amendment concerning the examination charges and assessment charges against in-

surance premium finance companies by the board. Earliest possible date of adoption - February 20
page 225

The **Board of Pardons and Paroles** propose amendments concerning origin and purpose, chairmanship, quorum, majority vote, and official seal. Earliest possible date of adoption - February 20
page 228

Office of
the Secretary
of State

Texas Register

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- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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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 "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a. m. and 5 p. m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

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

How To Cite: Under the TAC scheme, each agency rule 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 the rule (27 indicates that the rule is under Chapter 27 of Title 1, 15 represents the individual rule within the chapter).



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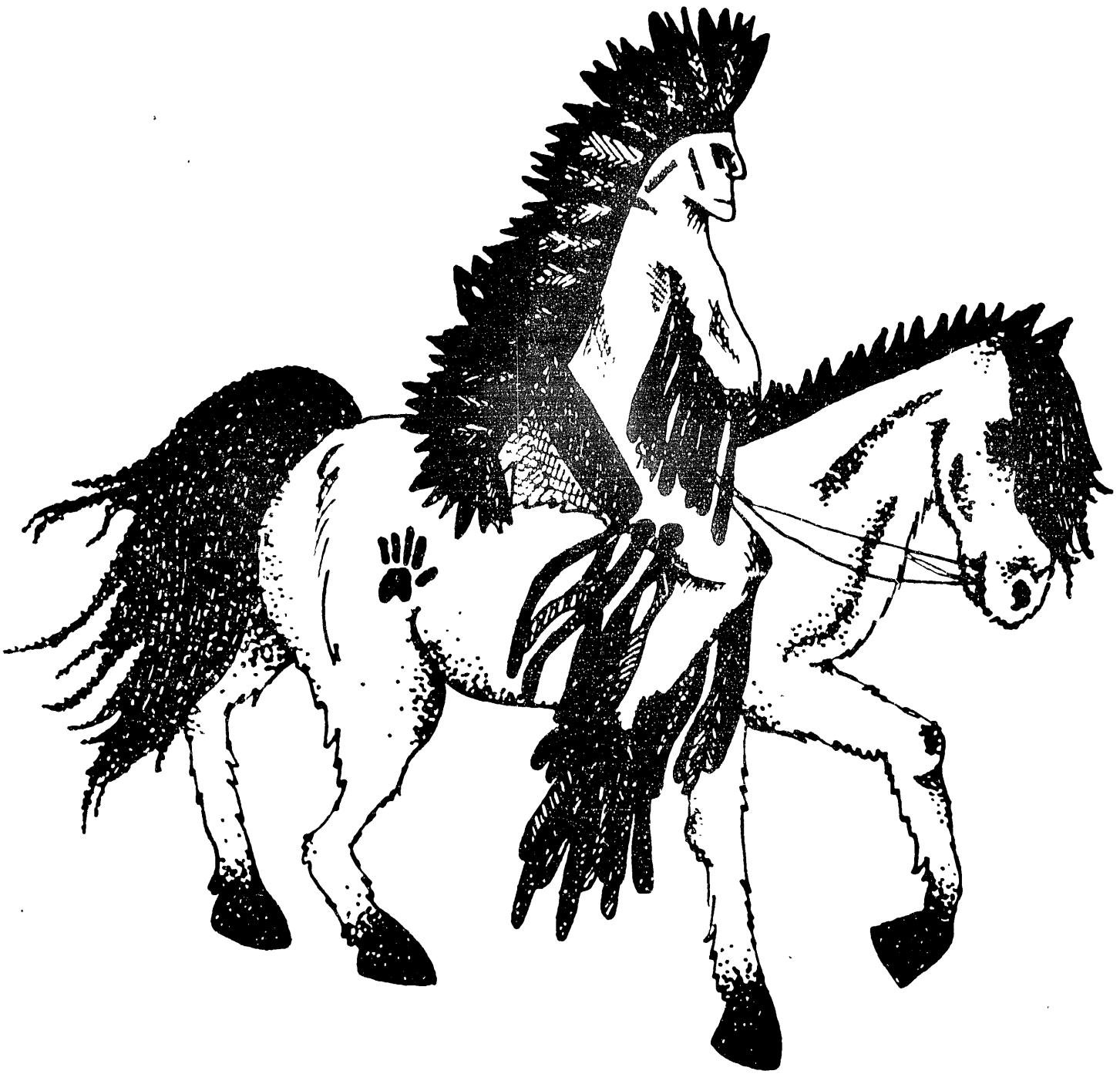
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Name: Tait Piper
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TAC Titles Affected—January

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1 TAC §113.10142

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 4 TAC §9.6142
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 4 TAC §11.265
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Name: Monica Hoppe
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School: Plano Senior High School, Plano

The Governor

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

Appointments Made

January 13

297th Judicial District Court

To be judge, until the next general election and until his successor shall be elected and duly qualified:

Earl F. Bates, Jr.
2701 Kimbo Road
Fort Worth, Texas 76111

Mr. Bates is replacing Charles Dickens of Fort Worth, who is deceased.

Texas Committee for the Humanities

For a term to expire December 31, 1988:

Carol Aldenboven McKay
38 Valley Ridge Road
Fort Worth, Texas 76107

Mrs. McKay is being reappointed.

Veteran's Land Board

For a term to expire December 29, 1990:

Jim Sale
5607 Ursula
Dallas, Texas 75229

Mr. Sale is being reappointed.

Texas Turnpike Authority Board of Directors

For a term to expire February 15, 1991:

Richard I. Bischoff
3909 Del Monte
Houston, Texas 77019

Mr. Bischoff is replacing Mr. Clive Runnells of Houston, whose term expired

Issued in Austin, Texas, on January 13, 1987

TRD-8600387

Mark White
Governor of Texas

★ ★ ★



Name: Ellen Marks
Grade: 12
School: Plano Senior High School, Plano

Proclamation

41-2118

Whereas, Article 6701d, Section 169B, Vernon's Texas Civil Statutes, provides that the State Highway and Public Transportation Commission may establish temporary maximum prima facie speed limits applicable to all highways in this state, including highways under the control of the Texas Turnpike Authority, incorporated cities and towns, and counties if certain circumstances are found to be existing and if specific problems and proper notice to the public are followed in establishing such speed limits; and

Whereas, Article 6701d, Section 169B(b)(4), Vernon's Texas Civil Statutes provides that the State Highway and Public Transportation Commission may issue an order establishing temporary maximum prima facie speed limits if "The failure to alter State speed limits will prevent the State from receiving revenue for highway purposes from the federal government", and

Whereas, the United States Congress has enacted, and the President has signed into law, Public Law 93-643, 23 U.S.C. 154, which Act provides that unless a state establishes a maximum speed limit of 55 miles per hour for any highway within its jurisdiction, the Secretary of Transportation has the authority to withhold federal highway funds from any such state so failing to comply; and

Whereas, the State Highway and Public Transportation Commission of the State of Texas issued its Finding or Minute Order No. 85188, dated December 22, 1986, finding that a specified maximum speed limit of 55 miles per hour is required by federal law, and that unless the State of Texas establishes a maximum speed limit of 55 miles per hour the State of Texas is threatened with the loss of federal highway funds and so fixed the maximum speed limit on all highways in the State of Texas, within and outside the limits of incorporated cities, at 55 miles per hour effective on January 28, 1987, at 12:01 a.m. for a period of 120 days or until such time as such order is amended or repealed for reasons consistent with federal laws and directives or State law.

Whereas, Said Finding or Minute Order having been fully filed in my office, and I have independently found that the failure to alter our State speed limits to a maximum speed limit of 55 miles per hour will prevent the State of Texas from receiving revenue for highway purposes from the federal government

Now, Therefore, I do hereby proclaim that the facts necessary to support the issuance of the State Highway and Public Transportation Commission Finding or Minute Order No. 85188 exist and the Commission's Finding or Minute Order shall take effect on January 28, 1987, at 12:01 a.m.

Issued in Austin, Texas on January 5, 1987.

TRD-8700375a

Mark White
Governor of Texas

Executive Order

MW-40A

WHEREAS, P.L. 99-514, the Tax Reform Act of 1986 (the "Act") imposes a volume ceiling on the aggregate principal amount of "private activity bonds" (as defined in the Tax Act) that may be issued within the State of Texas during any calendar year; and

WHEREAS, the state ceiling for Texas imposed by the Tax Act shall be an amount equal to \$75 multiplied by the state population, and

WHEREAS, the most recent estimate of the State's population released before the beginning of calendar year 1987 by the Bureau of the Census was 16,370,000; and

WHEREAS, the state ceiling for Texas imposed by the Tax Act for calendar year 1987 is \$1,227,750,000; and

WHEREAS, Section 1301 of the Tax Act and Section 146(e) of the Internal Revenue Code of 1986 authorizes the Governor of a state to proclaim a formula for allocating the state ceiling among the governmental units (or other authorities) in such State having authority to issue private activity bonds, until the earlier of the last day of the first calendar year after 1986 during which the legislature of the state meets in regular session, or the effective date of any state legislation with respect to the allocation of the state ceiling; and

WHEREAS, the Texas State Legislature is next scheduled to meet in regular session in January 1987;

NOW, THEREFORE, I, Mark White, Governor of Texas do hereby proclaim that:

Section 1. For purposes of this Executive Order:

1. "Available" means any amount of the State ceiling set aside for reservations by an issuer upon compliance with the terms of this Executive Order.

2. "Bonds" means and includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution, and includes Mortgage Credit Certificates or the issuer's election to issue such certificates.

3. "Close" or "closing" means the issuance and delivery of bonds by an issuer in exchange for the required payment therefor.

4. "Code" means the Internal Revenue Code of 1986.

5. "Commission" means the Texas Economic Development Commission.

6. "Issuer" means and includes any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever, and any nonprofit corporation acting for or on behalf of any of the foregoing.

7. "Locally voted issue" means an issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

8. "Mature Project" means a project for which there was an inducement resolution prior to December 31, 1986 and either (a) with respect to which significant expenditures were paid or incurred prior to December 31, 1986 for acquisition, construction, reconstruction or rehabilitation of the project or (b) which was described in a binding contract for acquisition, construction, reconstruction or rehabilitation thereof, or was readily identifiable with and necessary to carry out a binding contract for the supply of property or services or the sale of output thereto or thereof. For purposes hereof, a contract shall be considered binding only if it was in force on December 31, 1986 and at all times thereafter, and required the payment or incurrence of significant expenditure (or the payment of significant damages in the event of a breach of such contract by the issuer or other user of bond proceeds). In either case for purposes hereof, expenditures or damages are "significant" if in the aggregate such expenditures plus such damages exceed the lesser of \$1,000,000 or 10 percent of the reasonably anticipated cost of the project.

9. "Private activity bond" has the meaning given that term under Section 141(a) of the Code.

10. "Qualified bond" has the meaning given that term under Section 141(d) of the Code.

11. "Related person" has the meaning given that term under Section 144(a)(3) of the Code.

12. "Reservation" means a reservation of a portion of the State ceiling for a specific bond issue.

13. "State-voted issue" means an issue of bonds which has been authorized pursuant to a statewide referendum approved by the voters of the State of Texas.

14. "State ceiling" means the amount of authority in the State to issue tax-exempt private activity bonds during calendar year 1987, as determined under the Code.

Section 2. (a) For the 1987 calendar year, without regard to the allocation formula set forth in the Code, the State ceiling is hereby allocated to the issuers that issue private activity bonds or other obligations containing a private use portion requiring an allocation.

(b) For the period of January 7, 1987 through September 30, 1987, no more than an aggregate amount of \$327,750,000 may be received by local housing finance corporations for the purpose of issuing qualified mortgage bonds (as defined in the Code), no more than an aggregate of \$200,000,000 may be reserved by issuers of State-voted issues (no more than \$100,000,000 of which may be reserved by any one such issuer), and no more than an aggregate of \$700,000,000 may be reserved for all other bonds requiring an allocation. From October 1, 1987 through December 15, 1987, that portion of the State ceiling not allocated during the prior period shall become available for any issuer for any bonds requiring an allocation, subject to the provisions of subsections (d) and (e) of this Section 2.

(c) Except as provided by this Section 2 and Sections 3 and 8 hereunder, reservations shall be granted in the order of receipt by the Commission of an application for a reservation, as provided in Section 6(d) of this Executive Order, regardless of the amount of the issue.

(d) Except for an application submitted pursuant to provisions of Section 8 of this Executive Order, an application for a reservation submitted on or before September 30, 1987, but at a time when the application cannot be granted because of the limitations of subsection (b) of this Section 2 will be considered for the portion of the State ceiling available commencing October 1, 1987, based on the original date of its receipt by the Commission.

(e) An application for a reservation submitted by a local housing finance corporation that has satisfied the requirements of Section 8(b) of this Executive Order and has not been granted because of the limitations of subsection (b) of this Section 2 shall be considered for the portion of the State ceiling available commencing October 1, 1987 only after receipt of evidence satisfactory to the Commission of lender commitment for qualified single family mortgage loan origination. Such application will be considered submitted for the purposes of this section on the later of October 2, 1987 or the date that the Commission determines said evidence of lender commitment satisfactory, and a portion of the State ceiling available commencing October 1, 1987 shall not be made available for that issue before October 2, 1987.

Section 3. An application for a reservation (other than from an issuer of a State-voted issue) that would cause an aggregate total of more than \$100,000,000 to be reserved for a single user and that user's related persons in calendar year 1987 will be considered to be received by the Commission on the later of October 1, 1987 or the date that the application is actually submitted, and a portion of the State ceiling shall not be made available for that issue before October 1, 1987.

Section 4. (a) An application for a reservation hereunder may be filed by an issuer on or after January 7, 1987 and must be on a form prescribed by the Commission and signed by a member or officer of the issuer and must state:

(1) the maximum amount of the bonds in the issue requiring an allocation pursuant to Section 146 of the Code;

(2) the purpose of the bonds or a functional description of the project, including the identification

of the user of the proceeds or project financed thereby;

- (3) whether the bonds are qualified bonds;
 - (4) if the bonds are qualified bonds, the subparagraph of Section 141(d)(1) of the Code that applies, and if Section 141(d)(1)(A) of the Code applies, the paragraph of Section 142(a) of the Code that applies;
 - (5) if the bonds are not qualified bonds, that Section 141(b)(5) of the Code that applies, or in the case of transition rule projects the paragraph of the Tax Act that applies;
 - (6) a statement by the issuer (other than an issuer of a State-voted issue) that bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year, or for which there exists available unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, unless such issuer provides evidence that it has entered into a binding contract or binding contracts to expend the unexpended proceeds within 12 months after the date of receipt by the Commission of an application for a reservation;
 - (7) whether the bonds are to be issued to finance a Mature Project, and
 - (8) other information that the Commission may require
- (b) An application for a reservation may not be submitted after 5:00 p.m. December 15, 1987
- (c) The Commission shall not reserve a portion of the State ceiling for an issuer (other than an issuer of a State-voted issue) to whom proceeds are available from other obligations issued by or on behalf of such issuer for the same stated purpose for which such issuer is applying for a reservation, except as otherwise provided for in Section 4(a)(6) above

Section 5. A Reservation may not be assigned except between a governmental unit and an issuer authorized to issue private activity bonds on behalf of that governmental unit

Section 6. (a) Except as provided below, not later than (i) the 30th calendar day after an issue's Reservation Date with respect to any issue of bonds other than an issue of bonds to finance a Mature Project, or (ii) the 150th calendar day after an issue's Reservation Date with respect to any issue of bonds to finance a Mature Project, the issuer shall submit to the Commission certified copies of the documents authorizing the issuance of the bonds and other information relating to the issuance of the bonds, including a statement of the items set forth in subparagraphs (2) and (6) of Section 4(a) hereof, evidence satisfactory to the Commission that any public hearing and public approval of the bonds as may be required by the Code has occurred, and a statement of the bonds'

- (1) principal amount;
 - (2) interest rate or formula or method by which the interest rate is calculated;
 - (3) maturity schedule; and
 - (4) initial purchaser or purchasers
- (b) If the principal amount of the bonds authorized and delivered is less than 90 percent of the amount stated in the application for a reservation, or if the purpose of the bonds stated in the application for a reservation has changed, the reservation is automatically canceled. If the principal amount of the bonds delivered is at least 90 percent but less than 100 percent of the amount stated in the application for a reservation, the reservation is reduced to the principal amount of the bonds delivered.
- (c) If the issuer does not timely submit the documents required by this section within the applicable period provided by subsection (a) of this section:
- (1) the issue's reservation is automatically canceled;
 - (2) no issuer may submit an application for a reservation for the same project during the 60-day period beginning on the issue's Reservation Date;
 - (3) no issuer may submit an application for a reservation for the same Mature Project during 1987;
- and
- (4) the issuer is eligible for a carryforward designation for the project only as provided by Section 10(d) herein.
- (d) The Reservation Date for an issue is the earliest date on which:
- (1) the application for a reservation has been accepted for filing by the Commission as provided herein;
- and
- (2) the issuer is notified by the Commission that a portion of the State ceiling is or becomes available to the issue.
- (e) Notwithstanding the foregoing, Section 6(a), (b), and (c) of this Executive Order shall not apply to local housing finance corporations issuing qualified mortgage bonds during 1987.

Section 7. (a) Except as provided by subsection (b) of this section, the issuer shall deliver the bonds not later than (i) the 60th calendar day after the Reservation Date as provided under Sections 4 and 6 of this Executive Order with respect to any issue of bonds other than an issue of bonds to finance a Mature Project, or (ii) the 180th calendar day after the Reservation Date as provided under Sections 4 and 6 of this Executive Order with respect to any issue of bonds to finance a Mature Project

(b) Regardless of the deadline provided by subsection (a) of this section, the issuer shall deliver the bonds by 5:00 p.m. on December 23, 1987

(c) If the issuer does not deliver the bonds within the aforesaid applicable time period specified in subsection (a) of this Section 7, or if the issuer fails to deliver the documents referred to in subsection (d) of this section, the issue's reservation is automatically canceled

(d) Not later than the fifth business day after the day of delivery, the issuer shall submit to the Commission a Certificate of Delivery, as prescribed by the Commission, stating the date of delivery of the bonds and the principal amount of the bonds issued, provided, however, that said Certificate of Delivery must be received by the Commission no later than 5:00 p.m. on December 23, 1987.

(e) If for any reason other than provided by Section 6(c) of this Executive Order an issuer's reservation is canceled

(1) the issuer may not submit an application for a reservation for the same project during the 120-day period beginning on the Reservation Date of the canceled reservation;

(2) the issuer may not submit an application for a reservation for the same Mature Project during 1987; and

(3) the issuer is eligible for a carryforward designation for the project only as provided by Section 10(d) hereunder

(f) The five business day period described in subsection (d) of this section may be extended by an additional five business days if the issuer submits to the Commission a written request for the extension; provided, that no such extension shall result in said period extending beyond December 23, 1987. The Commission may approve the request if it considers the request was made in good faith and is appropriate

Section 8 The 1987 allocation for issuers of qualified mortgage bonds (as defined by the Code) shall be in accordance with that procedure for other bonds subject to this Executive Order, except as provided hereunder.

(a) The maximum amount which may be reserved by a local housing finance corporation for the issuance of qualified mortgage bonds in calendar year 1987 shall be computed at fifty percent (50%) of the maximum amount which could have been reserved by such local housing finance corporation according to the formula established under Section 5(b) of Article 12691-8 for calendar year 1986, provided, however, that no local housing finance corporation shall receive an allocation for the issuance of qualified mortgage bonds of more than \$50,000,000.00, and no local housing finance corporation shall receive an allocation for the issuance of qualified mortgage bonds of less than \$15,000,000.00, unless such housing finance corporation elects to receive a smaller allocation.

(b) Any local housing finance corporation wishing to receive a reservation of a portion of the 1987 State ceiling for the issuance of qualified mortgage bonds must apply to the Commission, according to requirements as set forth in Section 4(a) of this Executive Order, no later than 5 p.m. on January 30, 1987. With respect to those local housing finance corporations that so apply to the Commission, the categories of priority for a reservation of a portion of the 1987 State ceiling shall be as provided in subsections (c) and (d) of this Section 8. For the purposes of this Section 8, those "Tier One" local housing finance corporations that receive the initial reservations of the 1987 State ceiling shall have a Reservation Date of February 9, 1987. "Tier Two", "Tier Three", and "Tier Four" local housing finance corporations shall not be eligible to receive a reservation for the issuance of qualified mortgage bonds until the earlier of (1) the date a portion of the State ceiling reserved for qualified mortgage bonds becomes available, or (2) October 2, 1987. If, prior to October 1, 1987, a portion of the State ceiling reserved for qualified mortgage bonds becomes available "Tier Two", "Tier Three", and "Tier Four" local housing finance corporations may be granted a reservation in the order of priority as provided in subsection (d) of this Section 8.

(c) "Tier One" local housing finance corporations for the calendar year 1987 allocation include only those housing finance corporations that filed reservation requests with the Executive Director of the Texas Department of Community Affairs on January 27, 1986, that did not receive a reservation in 1986 pursuant to Executive Order MW-40, and filed a reservation request in accordance with subsection (b) of this Section 8. "Tier One" local housing finance corporations for 1987 shall retain the same order of priority as that established for reservation requests filed with the Executive Director of the Texas Department of Community Affairs on January 27, 1986.

(d) "Tier Two" local housing finance corporations for 1987 include those local housing finance corporations representing populations on whose behalf no reservation requests were filed with the Executive Director of the Texas Department of Community Affairs on January 27, 1986, and which did not receive a reservation in 1986 pursuant to Executive Order MW-40. "Tier Three" local housing finance corporations for 1987 include those housing finance corporations that received reservations in 1986 pursuant to Executive Order MW-40 and which closed a bond issue for which a reservation was granted thereunder in 1986. "Tier Four" local housing finance corporations for 1987 include those housing finance corporations that received reservations in 1986 pursuant to Executive Order MW-40 and which did not close bond issues for which a reservation was granted thereunder in 1986. The order of priority of local housing finance corporations within "Tier Two", "Tier Three", and "Tier Four", respectively, for 1987 shall be determined by lot.

Section 9 The Commission shall publish weekly in the *Texas Register* a statement of the amount of the State ceiling remaining unreserved, a list of the issues receiving a reservation since the last publication, including the amount for each reservation, and a list of issues that had previously received a reservation that have been issued and delivered and for which it has received a Certificate of Delivery since the last publication.

Section 10 (a) The amount of the State ceiling that has not been reserved before December 16, 1987, and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation, may be designated as carryforward for specific projects. An issuer may submit an application for a carryforward designation at any time from January 7, 1987 until 5:00 p.m. on December 18, 1987, but an issuer who has filed an application for a reservation under Section 4 of this Executive Order may not submit an application for carryforward for the same project, except as provided for in Section 6(c) and 7(e) hereunder. No issuers may submit more than one application for carryforward. Issuers are eligible to receive a carryforward designation according to a system of priority classifications. Within each priority classification issuers are eligible to receive a designation of carryforward in the order of receipt of each application for a carryforward designation, to the extent that the State ceiling is not exceeded. No application for carryforward may exceed \$100 million.

(b) Priority classifications for 1987 carryforward are as follows:

(ii) Priority 1 - Issuers of State voted issues

(iii) Priority 2 - Projects for which issuers of locally voted issues apply, in such cases where the bonds will be private activity bonds for which an allocation will be required in order for the bonds to be tax-exempt under relevant provisions of the Code, and in such cases where the excess private use of a governmental bond will require allocation in order that the bond can retain its tax-exempt status under provisions of the Code

(iii) Priority 3 - State agencies (other than issuers of State-voted issues) and political subdivisions whose Boards of Directors are constituted pursuant to Section 30a of Article XVI of the Texas Constitution.

(iv) Priority 4 - All other political subdivisions which have authority to issue bonds. Projects for which carryforward is applied (A) must have an inducement resolution or other comparable preliminary approval prior to submission of an application for carryforward, and (B) must be owned by governmental unit (per relevant provisions of the Code)

(v) Priority 5 - Issuers created to act on behalf of this State, or on behalf of one or more political subdivisions of this State, which are applying for carryforward for projects for which, (A) there was an inducement resolution or other comparable preliminary approval prior to submission of an application for carryforward, and (B) with respect to which either a binding contract to incur significant expenditures for construction, reconstruction, or rehabilitation was entered into prior to submission of an application for carryforward, (or were readily identifiable with and necessary to carry out a binding contract for the supply of property or services or the sale of output thereto or thereof), or significant expenditures were paid or incurred prior to submission of an application for carryforward. For purposes of this Section 10(b)(v), the term "significant expenditures" means expenditures greater than the lesser of \$1,000,000 or 10 percent of the reasonably anticipated cost of the project

(vi) Priority 6 - Issuers created to act on behalf of this State, or on behalf of one or more political subdivisions of this State, which are applying for carryforward for projects for which there was an inducement resolution or other comparable preliminary approval prior to submission of an application for carryforward

(c) An application for a carryforward designation must be signed by the chairman or any other authorized official of the governing body of the issuer. The application must contain the following:

(i) for Priority 1 -

(A) A statement identifying the issuer as an agency of the State, including its statutory authorization to issue bonds

(B) A statement of authorized but unissued bond authority, as of the date of the application for carryforward relative to bonds approved in statewide referendum

(C) A statement of the amount of carryforward requested.

(D) A description of the purpose for which the carryforward is requested (including the appropriate section reference to the Code which applies to the purpose).

(E) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose.

(F) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code

(ii) for Priority 2 -

(A) A statement identifying the issuer as a political subdivision of the State, including its statutory authorization to issue bonds

(B) A certified copy of the election proceedings in which the bonds for which the carryforward is requested were approved, and the total authorized but unissued bond authority as of the date of the request for carryforward

(C) A statement of the amount of carryforward requested

(D) A description of the purpose for which the carryforward is requested (including the appropriate section reference to the Code which applies to the purpose)

(E) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose

(F) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code

(iii) for Priority 3 -

(A) A statement identifying the issuer as an issuer whose Board of Directors is constituted under Section 30a of Article XVI of the Texas Constitution

(B) A statement of the amount of carryforward requested

(C) A description of the purpose for which the carryforward is requested (including the appropriate section reference to the Code which applies to the purpose)

(D) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose

(E) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code

(iv) for Priority 4 -

(A) A statement identifying the issuer

(B) A certified copy of the inducement resolution or other comparable preliminary approval for the project for which carryforward is requested.

- (C) A statement that the project will be owned and operated by a unit of government.
- (D) A statement of the amount of carryforward requested.
- (F) A description of the purpose for which the carryforward is requested (including the appropriate section reference to the Code which applies to the purpose).
- (F) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose.
- (G) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code
 - (v) for Priority 5
 - (A) A statement identifying the issuer
 - (B) A certified copy of the inducement resolution or other comparable preliminary approval for the project for which carryforward is requested.
 - (C) A statement of approval for the request for carryforward signed by the chief elected official or chairman of the sponsoring governmental unit.
 - (D) A statement of the amount of carryforward requested.
 - (E) A description of the purpose for which carryforward is requested (including the appropriate section reference to the Code which applies to the purpose).
 - (F) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose.
 - (G) Evidence that "significant expenditures" have been paid or contracted to be paid as of the date of the carryforward application.
 - (H) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code.
 - (vi) for Priority 6—
 - (A) A statement identifying the issuer.
 - (B) A certified copy of the inducement resolution or other comparable preliminary approval for the project for which carryforward is requested.
 - (C) A statement of approval for the request for carryforward signed by the chief elected official or chairman of the sponsoring governmental unit
 - (D) A statement of the amount of carryforward requested.
 - (E) A description of the purpose for which the carryforward is requested (including the appropriate section reference to the Code which applies to the purpose)
 - (F) A statement of the reasonable expectation that the amount of carryforward requested will be issued for the stated purpose, an estimated issuing schedule, and a statement that carryforward will be utilized prior to seeking additional allocations for the same purpose.
 - (G) A statement that the issuer is apprised of and will perform such steps required for issuers carrying forward, specified in the Code
- (d) During a period specified in Section 6(c) or 7(e) hereunder, an issuer to which the section applies may not receive a carryforward designation unless all other eligible applicants have received a carryforward designation
- (e) An application may be withdrawn or amended by the issuer submitting to the Commission a notice of the withdrawal or amendment. If the application is amended, the application's place in the order of eligibility for a carryforward designation within a classification is determined by the date of the amendment rather than the date that the application was originally submitted.

Section 11. Any submission required to be made to the Commission hereunder must be delivered to the Commission at its Austin office during normal business hours. The Commission shall note on the face of the document the date and time that it is delivered and provide the issuer with a receipt describing the document delivered and the date and time of delivery.

Section 12. If the last date any submission required to be made to the Commission hereunder is a Saturday, Sunday, or a State holiday, then the last date for such submission shall be the next succeeding day which is not such a Saturday, Sunday, or State holiday.

Section 13. This Executive Order shall remain in effect until modified, amended, or rescinded by the Governor, or until the effective date of legislation enacted during the 70th Legislature.

Issued in Austin Texas on January 6, 1987.

TDR-8700374

Mark White
Governor of Texas

Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Opinions

JM-610 (RQ-529). Request from Gary Thompson, chairman, Committee on County Affairs, Texas House of Representatives, Austin, concerning the construction of Texas Civil Statutes, Article 1269k, §6(a), which addresses conflicts of interest by employees of housing authorities.

Summary of Opinion. Texas Civil Statutes, Article 1269k, §6(a), bars an employee of a housing authority from serving as a consultant or bookkeeper for another housing authority or from owning a home included in another housing authority.

TRD-8700356

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JM-611 (RQ-718). Request from Al Luna, chairman, Science and Technology Committee, Texas House of Representatives, Austin, concerning the residence of persons who winter in Texas, for purposes of voting, operating a motor vehicle, certificates of title, and probate, inheritance tax, and marital property laws.

Summary of Opinion. A person who knowingly makes a false entry on a voter registration application commits an offense under the Penal Code, §37.10. A person who is unqualified to vote commits an offense by voting or attempting to vote in an election in which the person knows he is ineligible to vote. Election Code §64.012(i)(1). A person who requests, commands, or attempts to induce a person unqualified to vote to make a false statement on a voter registration application commits an offense under the Election Code, §13.007. Whether persons who spend the winter in Texas but accept the benefits of residence in other states and intend to return to those states are residents of Texas for voting purposes must be determined on a case by case basis. The Election Code, §§13.074-13.080 provide the exclusive procedure for challenging a voter applicant's qualifications.

The Certificate of Title Act, Texas Civil Statutes, Article 6687-1, requires every person who seeks to sell, transfer, or encumber any motor vehicle in this state to obtain a certificate of title and to have the vehicle inspected for compliance with safety standards

prior to any such transaction, regardless of whether the owner is a Texas resident or a non-resident. Texas Civil Statutes, Article 6701d, additionally require every motor vehicle registered in this state to undergo an annual safety inspection. All Texas residents who operate motor vehicles on Texas highways are required to obtain a valid Texas driver's license. Texas Civil Statutes, Article 66887b. The single fact that a person registers to vote in Texas does not determine whether the person must satisfy any of these requirements.

TRD-8700357

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JM-612 (RQ-580). Request from Ray Farabee, chairman, Committee on State Affairs, Texas State Senate, Austin, concerning whether cooperative housing is entitled to the residence homestead tax exemption under the Texas Constitution, Article VIII, §1(b), and related questions.

Summary of Opinion. Neither the residence owned by the corporation nor the corporate stock owned by persons who live in cooperative housing is entitled to the residence homestead tax exemption provided by the Tax Code, §11.13, and the Texas Constitution, Article VIII, §1(b), or to the protection afforded homesteads exempt from forced sale for debt.

TRD-8700358

★ ★ ★

JM-613 (RQ-341). Request from Ray Keller, chairman, Committee on Law Enforcement, Texas House of Representatives, Austin, concerning whether it is a crime for a peace officer to carry a handgun while outside his jurisdiction or not in the actual discharge of his duties as a peace officer.

Summary of Opinion. A Texas peace officer, wherever in the state he might be and whether engaged in the actual discharge of his duties as a peace officer or not, is immune from prosecution under the Penal Code, §46.02, for unlawfully carrying a handgun.

TRD-8700359

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JM-614 (RQ-935). Request from Mike Driscoll, Harris County attorney, Houston, concerning whether Harris County may adopt a policy that prohibits supervisory personnel in the Adult Probation Department from belonging to the same union as rank-and-file employees.

Summary of Opinion. Texas Civil Statutes, Article 5154c, §4, prohibits a county adult probation department from prohibiting supervisory employees from belonging to the same union as rank-and-file employees.

TRD-8700360

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Requests for Opinions

RQ-951. Request from Ruben M. Escobedo, chairman, Board of Regents, Texas State University System, Austin, concerning authority of campus security officers at Southwest Texas State University to control traffic on adjacent city streets, and related questions.

TRD-8700338

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RQ-952. Request from Lynn Laird, PT, chairman, Texas Board of Physical Therapy Examiners, Austin, concerning whether a chiropractor is entitled to practice physical therapy and related questions.

TRD-8700339

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RQ-953. Request from Robert Bernstein, M.D., F.A.C.P., commissioner, Texas Department of Health, Austin, concerning the constitutionality of fees imposed on out-of-state milk processing and bottling plants under Texas Civil Statutes, Article 165-3.

TRD-8700340

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RQ-954. Request from Gary F. Kersey, county attorney, Kerrville, concerning the constitutionality of certain portions of the Code of Criminal Procedure, Article 14.03, regarding warrantless arrests.

TRD-8700341

RQ-955. Request from John W. Berry, county attorney, Karnes County courthouse, Karnes City, concerning whether a county may expend funds and oppose an application to amend a radioactive materials license.
TRD-8700342

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RQ-956. Request from Charles D. Pemick, Bastrop criminal district attorney, Bastrop County courthouse, Bastrop, concerning funding responsibilities of the City of Bastrop under the Indigent Health Care Act.
TRD-8700343

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RQ-957. Request from Oscar H. Mauzy, chairman, Senate Committee on Jurisprudence, Austin, concerning whether a home rule city may issue general obligation bonds for the purpose of financing public housing for low and moderate income families and related questions.
TRD-8700344

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RQ-958. Request from James S. McGrath, criminal district attorney, Beaumont, concerning the liability for taxes on property where a tax certificate states in error that no taxes are owing thereon.
TRD-8700345

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RQ-959. Request from Carlos Valdez, county attorney, Nueces County courthouse, Corpus Christi, concerning the conditions under which a taxing unit is required to make payment into a reinvestment zone fund under the Tax Increment Financing Act, Texas Civil Statutes, Article 1066e
TRD-8700346

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RQ-960. Request from John D. Hughes, Hood County attorney, county courthouse, Grandbury, concerning whether a county clerk is required to notify nondeveloper owners of land in a subdivision of a developer's request to revise a subdivision plot.
TRD-8700347

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RQ-961. Request from Robert Bernstein, commissioner of health, Texas Department of Health, Austin, concerning the reconciliation of conflicting portions of House Bill 1732, Acts, 69th Legislature, 1985, Chapter 913, and House Bill 2091, Acts, 69th Legislature, 1985, Chapter 931, which amend, the Texas Food, Drug, and Cosmetic Act, Texas Civil Statutes, Article 4476-5.
TRD-8700348

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RQ-962. Request from Carlos Valdez, county attorney, Nueces County courthouse, Corpus Christi, concerning whether the duty of collecting taxes is constitutionally imposed on the county tax assessor/collector.
TRD-8700349

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RQ-963. Request from Barry I. Macha, criminal district attorney, Wichita County courthouse, Wichita Falls, concerning the liability of a county for acts committed by members of a volunteer fire department.
TRD-8700350

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RQ-964. Request from O. L. McCotter, director, Texas Department of Corrections, Huntsville, concerning whether the Texas Department of Correction's granting of good time to persons for time incarcerated in a county jail violates Texas Civil Statutes, Article 6181-1, §3(c)
TRD-8700351

RQ-965. Request from Kelly Frels, attorney at law, Bracewell and Patterson, Houston, concerning whether the Open Records Act, Article 6252-17a, §3(a)(3), authorizes the Houston Independent School District to withhold a survey of the location of recently repainted school desks and chairs.
TRD-8700352

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RQ-966. Request from Walter P. Zivley, Liddell, Sapp and Zivley, Austin, concerning whether records prepared by a law firm employed by the University of Houston-University Park to investigate the university's football program are subject to required disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a
TRD-8700353

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RQ-967. Request from Lee P. Brown, chief of police, City of Houston, Houston, concerning the availability of records of the outside, private employment of police officers.
TRD-8700354

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RQ-968. Request from Ann W. Richards, treasurer, State of Texas, Austin, concerning whether information regarding the inventory of safe deposit boxes in the custody of the State Treasurer is excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.
TRD-8700355

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Emergency

Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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 rules. New language added to an existing rule is indicated by the use of **bold text** [Brackets] indicate deletion of existing material within a rule

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 513. Registration of CPAs of Other States and Persons Holding Similar Titles in Foreign Countries

★ 22 TAC §513.2

The Texas State Board of Public Accountancy is renewing the effectiveness of the emergency adoption of amended §513.2 for a 60-day period effective October 17, 1986. The text of the amended §513.2 was originally published in the October 17, 1986, issue of the *Texas Register* (11 TexReg 4295)

Issued in Austin, Texas, on January 13, 1987

TRD 8700386 William A. Sansing
Coordinator
Texas State Board of
Public Accountancy

Effective date February 6, 1987
Expiration date April 7, 1987
For further information, please call
(512) 450-7041

★ ★ ★

TITLE 31. NATURAL RESOURCE AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Closure of Oystering Areas

★ 31 TAC §57.422

The Texas Parks and Wildlife Commission adopts on an emergency basis new

§57.422, concerning closing the public oyster reefs in Texas. To protect human health, the Texas Department of Health has closed and opened portions of the coast at various times to shellfish harvest. This has been due to a red tide incident and runoff from heavy rains. Since the November 1, 1986, oyster season began, only relatively small areas of the coast have been opened for oyster harvest at any one time. Record high numbers of boats concentrated in these areas and overworked the reefs. The areas that are currently opened by the Texas Department of Health and those that may be subsequently opened, except San Antonio Bay, will not be able to sustain the intense fishing pressure for the remainder of the oyster season which ends on April 30, 1987. San Antonio Bay was left open because the number of oysters present will support additional harvest. If the reefs in San Antonio Bay become overworked, they will also be closed.

The commission found that the public reefs are in an overworked condition and are in immediate danger of depletion and further found an imminent peril to the public welfare required an emergency closure to oystering in all Texas bays, except for public reefs in the San Antonio Bay System, to prevent depletion of the resource.

This new section is adopted under the authority of the Texas Parks and Wildlife Code, §76.115 and §61.052, which provides the commission with the authority to close an area to the taking of oysters when the resource is overworked or in danger of depletion.

§57.422. *Closure of Oystering Areas.* The public oyster reefs in Texas, except those in the San Antonio Bay System, are closed to the harvest of oysters during the period January 13, 1987-February 19, 1987.

Issued in Austin, Texas, on January 12, 1987

TRD-8700262 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date January 12, 1987
Expiration date May 12, 1987
For further information, please call
(512) 389-4805

★ ★ ★

Chapter 65. Wildlife Subchapter A. Statewide Hunting and Fishing

★ 31 TAC §65.45

The Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of amended §65.45 for a 60-day period effective January 29, 1987. The text of the amended §65.45 was originally published in the September 29, 1987, issue of the *Texas Register* (11 TexReg 3989)

Issued in Austin, Texas, on January 12, 1987

TRD-8700263 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date January 29, 1987
Expiration date February 22, 1987
For further information, please call
(512) 389-4974

★ ★ ★



Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations Subchapter C. Educational Programs for Gifted and Talented Students

★ 19 TAC §89.56

The Texas Education Agency proposes an amendment to §89.56, concerning gifted and talented student allotment. In general, the section requires districts to offer a full-year program to be eligible for funding. The proposed amendment allows districts with an average daily attendance of 1,000 or less that have not yet applied for state operational funding under this program to offer a summer program for gifted and talented students, upon approval of the commissioner of education. No district that currently operates a full-year program may reduce its services for gifted students to a summer program only.

Lynn M. Moak, duty commissioner for research and information, has determined that for the first five year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. The Texas Education Code, §16.159(d), provides that if the amount of funds for which districts are eligible under this section exceeds the amount of state funds appropriated in any year of the program, the commissioner of education shall reduce each district's allotment on a pro-rata basis.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, have 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 districts, particularly small districts, which have not found it feasible to develop and operate a full-year state-approved gifted and talented program may be able to provide suitable programs for gifted and talented students during the summer.

Comments on the proposal may be submitted to Dr. Beverly Bardsley, Director, Policy Development, 1701 North Congress

Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

This amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program, and §16.159, which makes the gifted and talented student program a part of the Foundation School Program.

§89.56. *Gifted and Talented Student Allotment.*

- (a)-(d) (No change.)
- (e) Districts that apply for operational funds shall count for funding only those students identified and served by a full-year program. **However, a district with an average daily attendance of 1,000 or less that has not yet submitted an application for approval for an operational program may apply for approval to offer a summer program. The commissioner of education has authority to review applications on an annual basis and approve a limited number of summer programs. A district that currently operates a full-year program cannot reduce its services for gifted students to a summer program only.**

(f)-(h) (No change.)

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

Issued in Austin, Texas, on January 13, 1987.

TRD-8700384

W. N. Kirby
Commissioner of
Education

Proposed date of adoption:
March 14, 1987
For further information, please call
(512) 463-9212

★ ★ ★



Subchapter G. Special Education Clarification of Provisions in Federal Regulations and State Law

★ 19 TAC §89.211

The Texas Education Agency proposes an amendment to §89.211, concerning handicapped students. The amendment adds certified speech and language therapist and licensed speech pathologist to those who may assess speech handicapped students and participate in the assessment of autistic students. The change makes the section consistent with the Texas Education Code, §16.056.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Moak and Dr. Beverly Bardsley, director for policy development, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the section will be consistent with the Texas Education Code, §16.056. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

This amendment is proposed under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program, and §16.151, which makes special education a part of the Foundation School Program.

§89.211. *Handicapped Students.*

- (a) (h) (No change.)
- (i) Speech handicapped student. A stu-



dent who has been determined by a certified speech and hearing therapist, **certified speech and language therapist, or a licensed speech language pathologist** to have a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment

(j) Autistic student. A student who evidences the criteria for autism and other pervasive development disorders as determined by a multidisciplinary team using the definition as stated in the third edition of *The Diagnostic and Statistical Manual (DSM-III)*.

(1) The multidisciplinary team must include:

(A) (No change.)

(B) a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech language pathologist; and

(C) (No change.)

(2) (No change.)

(k)-(m) (No change.)

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

Issued in Austin, Texas, on January 13, 1987

TRD-8700385

W N Kirby
Commissioner of
Education

Proposed date of adoption.

March 14, 1987

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

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, [and] Examinations, and Assessments

★ 28 TAC §25.703, §25.711

The State Board of Insurance proposes an amendment to §25.703 and new §25.711, concerning examination charges and assessment charges against insurance premium finance companies by the board. This amendment and new section are necessary to provide charges and a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under the proposed amendment to §25.703, the board would levy charges to cover the costs of examinations and would collect from each insurance premium finance company on the basis of the actual salaries and expenses of the examiners allocable to each examination. Under new

§25.711, the board would levy a rate of assessment for 1987 to cover general administrative expense and would collect from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1986 calendar year. With new §25.711, the board amends the title of Subchapter H to include a reference to assessments

Carroll Fuchs, chief of staff services, has determined that for the first five-year period the proposed sections will be 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

Mr. Fuchs 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 adoption of charges and a rate of assessment to meet the expenses of examinations and investigations and of administering the laws relating to regulation of insurance premium finance companies. The anticipated economic cost to persons who are required to comply with the proposal is dependent on the amount charged and assessed against each company. This amount will depend on the costs of examinations and investigations, and on total loan dollar volume for the 1986 calendar year

Comments on the proposal may be submitted to Carroll Fuchs, Chief of Staff Services, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998

The amendment and new sections are proposed under the Insurance Code. Articles 24.06, §(c), and 24.09. Article 24.06, §(c), provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations, and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the State Board of Insurance to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies

§25.703 *Examination Charges*. The charges for conducting an examination of an insurance premium finance company shall be in accordance with established procedure of the State Board of Insurance. The charge to be invoiced to the insurance premium finance company shall include the actual salaries and expenses of the examiners allocable to each examination [travel, per diem, and the examiner's time at his current hourly wage rate plus employee benefits and general and administrative expenses]. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed that part of the annual salary attributable to each working

day the examiner is examining the company. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

§25.711. *General Administrative Expense Assessment, 1987*. On or before April 1, 1987, each insurance premium finance company holding a license issued by the State Board of Insurance under the Insurance Code, Chapter 24, shall pay to the Texas State Board of Insurance an overhead charge which the board shall assess to cover the general administrative expense attributable to the regulation of insurance premium finance companies. Payment shall be by check, which shall be filed with the report required by the Insurance Code, Article 24.10(b), at the offices of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assessment to cover general administrative expense shall be computed and paid as follows

(1) Payment shall be in the amount of 0.03373 of 1.0% of the total loan dollar volume of the company for the calendar year 1986.

(2) Should the overhead charge, as computed under paragraph (1) of this section, produce an overhead assessment of less than \$10, a minimum overhead assessment of \$10 shall be levied and collected

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

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

Issued in Austin, Texas, on January 14, 1987

TRD-8700401

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption

February 20, 1987

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 Q. Franchise Tax

★ 34 TAC §3.391

The Comptroller of Public Accounts proposes an amendment to §3.391, concerning franchise tax reports and payments. One amendment changes the title of the section from "Franchise Tax Reports and Payments" to "Franchise Tax—General Infor-

mation." The major change is the moving of information concerning reports, due dates, penalties, interest, and audits to new §3.413, concerning franchise tax reports and payments, which is being proposed simultaneously with the amendments to this section. There are also two minor word changes due to statutory changes.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Moore 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 providing them with new information regarding their tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor of Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

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

§3.391 Franchise Tax - General Information. [Reports and Payments]

(a) Reports and payments, penalties.

(1) Each domestic and foreign corporation subject to the franchise tax levied by Article 12.01 shall file a first year franchise tax report and, thereafter, an annual franchise tax report, and at the same time shall pay the franchise tax and any applicable penalties and interest due by the corporation as shown by such reports. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership for which he has been appointed receiver. A debtor in possession, or the appointed trustee or receiver, of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act, is responsible for filing franchise tax reports and paying the franchise tax prior to the confirming and consummating of the plan of reorganization or arrangement.

(A) The initial franchise tax deposit of \$100, as required by Article 12.06 Texas Tax - General and Franchise Tax Rule 026.02-12.019, is due prior to a corporation's receipt of its Charter or Certificate of Authority under the Texas Business Corporation Act or Texas Professional Corporation Act.

(B) The first year report and payment of the tax, if any, over the \$100 prepayment credit, are due no later than 90

days after the expiration of one year from the date of the Charter of a Texas corporation, or from the date of the Certificate of Authority of a foreign corporation, whichever is applicable. The first franchise tax report and payment are for the period beginning on the date of such Charter or Certificate of Authority and ending on April 30 following the first anniversary of such Charter or Certificate. In addition, when the first anniversary occurs between January 1 and April 30, both dates inclusive, there shall also be computed and paid in advance with the first year report an additional year's tax for the franchise tax year beginning on May 1 following the first anniversary and ending on April 30 of the succeeding year. The report and tax (including the additional year's tax when applicable) shall be based on and computed in accordance with the corporation's financial condition as of the end of the month nearest its first anniversary. This closing date may fall within the same calendar year as the closing date for the corporation's initial annual franchise tax report. This circumstance does not result in double taxation or overlapping liability as the two reports are for different periods of time. Preprinted reports will be furnished by the comptroller on which the corporation must report its first year franchise tax liability.

(C) The annual franchise tax report shall be filed and the tax paid no later than June 15 of each year. The annual tax is paid in advance for the franchise tax year beginning on May 1 of the year in which the report is due and ending on April 30 of the succeeding year. The report and payment shall be based on and computed in accordance with the corporation's financial condition as of the last day of its accounting year ending in the preceding calendar year.

(2) If the due date of a report falls on Saturday, Sunday or a legal holiday, the report and payment may be filed on the next business day. The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing. However, a corporation may show by competent evidence that the actual date of posting was a date other than shown by the postmark or meter-mark. An affidavit by a person with personal knowledge of the actual date on which a report was posted is acceptable for this purpose.

(3) Penalty and interest

(A) Article 12.14 imposes a 5.00% penalty on the amount of franchise tax due by a corporation which fails to report and pay the tax when due. If the tax is not reported and paid within 30 days after the due date, an additional 5.00% penalty is imposed. There is a minimum penalty of one dollar. Delinquent taxes accrue interest at an annual rate of 6.00%, until December 31, 1979, and thereafter at an annual rate of 7.00%, said interest to begin accruing 60 days after the due date. If only a portion of the tax is timely paid, the foregoing penalties and

interest are applied only to the balance of the tax which was not timely paid. Interest is not payable by the comptroller on overpayments for or credits to which a taxpayer may be due.

(B) When a corporation is issued an audit assessment or other underpayment notice based on deficiency in a prior year, penalties and interest shall be applied as of the date in such prior year that the underpaid tax was due.

(C) The comptroller may determine that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements as to timeliness, in which event the comptroller also may determine that penalties or interest for the late filing of a report or for a late payment will not be due and payable. In requesting such a determination, the corporation should furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.]

(a)(b) Preparing the report; financial data; amended reports]

(1) The initial [first year] franchise tax report and the annual report shall be completed in accordance with this rule and the instructions printed on the report, and any special instructions which may be issued from time to time by the comptroller. Except as otherwise prescribed, the report shall reflect and the tax shall be computed on the corporation's financial condition as shown in its books and records of account. For example, if a corporation elects to treat intangible development costs as expenses for federal income tax purposes, but capitalizes such costs for book purposes, or vice versa, the franchise tax report must be filed in accordance with the books and records, not as shown by the federal income tax return. The books and records of account on which a corporation's financial condition is determined, means general and special journals and the ledger accounts. [In conducting an audit, or other examination of a corporation's franchise tax account, the comptroller, for the purpose of determining whether the books and records accurately reflect the corporation's financial condition, may examine financial statements, working papers, registers, memorandums, contracts, and any other business papers used in connection with its accounting system.]

(2) Except as may be permitted as a special reporting method under §3.393 of this title (relating to Special Reporting Procedures), a consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries, or the financial data of other separate corporations, as though they were a single economic entity, is not authorized by statute or by rule of the comptroller.

(3) A corporation may file an amended report for the purpose of correc-

ting the financial data on which a prior report was based, or for correcting a mathematical or other error in a prior report, or for the purpose of supporting a claim for refund. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report the corporation shall type or print thereon, immediately above the corporate name, the phrase "amended report." The report should be forwarded with a cover letter of explanation, with such enclosures as necessary to support the amendment.]

(b)(c) Payments under protest. It is the responsibility of the corporation which pays tax under protest to comply with the **Texas Tax Code, Chapter 112** [Article 1.05. For the corporation's convenience, the comptroller will advise it of the amount received that is paid by it under protest and the date of such payment.] The amount protested will be placed in a suspense account pending resolution of the matters in issue. If suit is not filed in accordance with the statute, the protest payment will be cleared to the general fund after the expiration of 90 days from the date of payment.

(d) Effective date of change in tax rates. A change in the basic rate of the franchise tax will be applied to all corporations as of the effective date of the change prescribed by the legislature. If an additional tax is enacted for a period after May 1 and ending on the following April 30, the additional tax will be applied to all corporations incorporated or issued a certificate of authority on or prior to the effective date of the additional tax. However, a corporation is not subject to such additional tax if it is incorporated or issued a certificate of authority after the effective date of the additional tax.]

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

Issued in Austin, Texas, on January 14, 1987

TRD-8700405 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption

February 20, 1987

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

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★ 34 TAC § 3.413

The Comptroller of Public Accounts proposes new § 3.413, concerning franchise tax reports and payments. The new section contains information previously in § 3.391 concerning franchise tax reports and payments, which is being amended simultaneously. The new section reflects recent statutory changes. The interest rate on delinquent taxes changed from 7% to 10% effective April 1, 1982. The due

date for the annual franchise tax report changed to March 15 in accordance with the Texas Tax Code, § 171.152 and § 171.202, as amended during the 1984 special legislative session. Corporations chartered, obtaining a certificate of authority, or beginning to do business in Texas during the period from October 4 through April 30 will compute and pay in advance an additional year's tax with their initial reports, in accordance with the Texas Tax Code, § 171.152 and § 171.153, as amended during the 1984 special and 1985 regular legislative sessions. As a result of changes made to the Franchise Tax Act by the legislature during the 1985 regular session, all foreign corporations must file and pay their initial report within 89 days after the first anniversary date of the certificate of authority or beginning of business in Texas, whichever is earlier. The legislature also made changes to the general provisions of the tax code during the 1985 regular session, which allow the comptroller to assess penalty if a deficiency determination is not paid within 10 days after it becomes final, or within 20 days after a comptroller's decision becomes final.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on state or local governments or on small businesses as a result of enforcing or administering the section. The amendments reflect statutory changes that have already been made and implemented.

Mr. Moore 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 provision of new information regarding the public's tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Teresa Van De Walle, Supervisor of Franchise Tax Policy Section, P.O. Box 13528, Austin, Texas 78711.

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

§ 3.413 Franchise Tax Reports and Payments

(a) Reports and due dates

(1) Each domestic and foreign corporation subject to the franchise tax levied by the Texas Tax Code, § 171.001, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a

receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(A) The initial franchise tax deposit (prepayment) of \$100, as required by the Texas Tax Code, § 171.155, and § 3.409 of this title (relating to Franchise Tax Deposits (Prepayments)), is due prior to a corporation's receipt of its charter or certificate of authority under the Texas Business Corporation Act or Texas Professional Corporation Act.

(B) Both the initial report and payment of the tax due in excess of the \$100 initial franchise tax deposit (prepayment), if any, are due no later than 89 days after the first anniversary date of the charter of a Texas corporation, or from the date of the certificate of authority or beginning of business in Texas of a foreign corporation, whichever is earlier. The initial franchise tax report and payment are for the periods beginning on the date of the charter, certificate of authority, or beginning of business in Texas and ending on April 30 following the first anniversary of the charter, certificate of authority, or beginning of business in Texas. For example, if a Texas corporation is chartered on June 1, 1985, the payment due with the initial report will be for the tax periods from June 1, 1985, through April 30, 1987. In addition, when the first anniversary occurs during the period from October 4 through April 30, there must also be computed and paid with the initial report an additional year's tax for the franchise tax year beginning on May 1 following the first anniversary and ending on April 30 of the succeeding year. For example, if a Texas corporation is chartered on November 1, 1985, the payment due with the initial report will be for the tax periods from November 1, 1985, through April 30, 1988. The report and tax (including the additional year's tax when applicable) must be based on and computed in accordance with the corporation's financial condition as of the end of the month nearest its first anniversary. This closing date may fall within the same calendar year as the normal annual closing date to be used for the corporation's first annual franchise tax report. On occasion the date used for the corporation's first annual report will be prior to the date used for the corporation's initial franchise tax report. For example, if a Texas corporation is chartered on June 1, 1985, and has a normal accounting year end of March 31, its initial report (due August 29, 1986) will be based on the financial condition of the corporation as of May 31, 1986. However, its first annual report (due March 15, 1987) will be based on the financial condition of the corporation as

of March 31, 1986. Each of these reports covers a different tax period, no overlapping of liability or double taxation occurs. For example, in the previous example, the initial report was for the tax periods from June 1, 1985, through April 30, 1987. The first annual report was for the tax period from May 1, 1987, through April 30, 1988. The corporation must submit its initial franchise tax report on the preprinted report form furnished by the comptroller. If this form is not received or is lost, an additional copy must be requested from the Tax Administration Division, P.O. Box 13528, Austin, Texas 78711, (512) 463-4600 or toll free from anywhere in Texas 1-800-252-5555.

(C) The annual franchise tax report must be filed and the tax paid no later than March 15 of each year. The annual tax is paid in advance for the franchise tax year beginning on May 1 of the year in which the report is due and ending on April 30 of the succeeding year. The report and payment must be based on and computed in accordance with the corporation's financial condition as of the last day of its accounting year ending in the preceding calendar year.

(D) See §3.412 of this title (relating to Survivors of Mergers) for special rules concerning corporations which are survivors or mergers.

(E) See §3.410 of this title (relating to Extensions for Annual Reports) for extensions of time to file an annual report.

(2) If the due date of a report falls on Saturday, Sunday, or a legal holiday, the report and payment may be filed on the next business day. The postmark date (or metermark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.

(b) Penalty and interest.

(1) The Texas Tax Code, §171.362, imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of \$1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. Interest accrues at an annual rate of 6.0% through March 31, 1980; at an annual rate of 7.0% from April 1, 1980, through December 31, 1981, and, beginning January 1, 1982, at 10% per annum.

(2) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency, penalties under §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 30 days after the date on which the ser-

vice of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the U.S. Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under §111.0081 of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of \$1,000 tax, \$100 penalty and \$15 interest (assume interest accrues \$1 per day), then on the 41st day after the deficiency notice is served, \$1,256 would be due (i.e., \$1,000 tax, \$100 initial penalty for not paying when originally due, \$100 penalty for not paying deficiency determination within 10 days after it became final, and \$56 interest).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision of the comptroller on a petition for redetermination becomes final 15 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after a comptroller's decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under §111.0081 of 10% of the tax assessed will be added. Using the previous example, on the 36th day after service of the comptroller's decision, \$1,251 would be due (i.e., \$1,000 tax, \$100 initial penalty, \$100 additional penalty and \$51 interest).

(4) If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

(c) A consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries or the financial data of other separate corporations as though they were a single economic entity, is not allowed.

(d) A corporation may file an amended report for the purpose of correcting a mathematical or other error in a report or for the purpose of supporting a claim for refund. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report, the corporation must type or print on the report, immediately above the corporation name, the phrase "amended report."

The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment.

(e) During the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with his examination, the comptroller may also examine any of the corporation's officers or employees under oath.

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

Issued in Austin, Texas, on January 14, 1987.

TRD-8700406

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption.

February 20, 1987

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

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**TITLE 37. PUBLIC
SAFETY AND
CORRECTIONS**

**Part V. Board of Pardons
and Paroles**

**Chapter 141. General
Provisions**

Board of Pardons and Paroles

★ 37 IAC §§141.1-141.5, 141.10

The Board of Pardons and Paroles proposes amendments to §§141.1-141.5 and 141.10, concerning origin and purpose of the board, composition of the board, chairmanship, quorum, majority vote, and official seal. The amendments reflect the changed and amended constitutional and statutory references, change the number of board members from three to six to comply with the constitutional and statutory amendments, add the vice chairman and change the method of designation of chairman and vice chairman to appointment by the governor rather than by will of the board majority, clarify the role of the chairman as spokesman for the board and further require him to obtain the views and positions of other board members only if they are present to voice their position on issues, change the statutory reference to comply with the amended law, clarify the role of the chairman of the board, make clear that board action by the whole board or any panel of less than the complete membership requires a majority be present before any business can be transacted, clarify that under the constitutional provision authorizing executive clemency that the governor's action must be based on a recommendation made by the

majority of the board membership rather than a simple majority of those voting on the issue, and clarify that with a board made up of an even number (six) the chairman will only vote on matters, other than executive clemency, considered by a quorum of the six-member board if his vote is needed to make or break a tie vote of the other members voting.

The board proposes these amendments to comply with amendments to the law and to show the changed and amended statutory authority.

A. E. Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn 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 as the amendments are for the purpose of conforming rules to the amendments of statutory and constitutional law. 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 Harry C. Green, General Counsel, PO Box 13401 Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper or necessary.

§141.1. Origin and Purpose of the Board. The Texas Board of Pardons and Paroles was created by constitutional amendment in 1936, to recommend to the governor, after conviction, reprieves, and commutations of punishment and pardons, and remission of fines and forfeitures. In 1947, the 50th Legislature passed the Adult Probation and Parole Law, which vested the board with the authority to release prisoners on parole upon the approval of the governor, and also to investigate and supervise parolees, including general direction of the Division of Parole Supervision. [Texas Constitution, Article IV, §11, Texas Code of Criminal Procedure, Article 42.12]. In 1983, the Texas Constitution, Article IV, §11, was amended, making the board a statutory agency. In 1985, the 69th Legislature amended the Adult Parole and Mandatory Supervision Law as codified in the Texas Code of Criminal Procedure, Article 42.18 [Texas Constitution, Article IV, §11, Texas Code of Criminal Procedure, Article 42.18].

§141.2. Composition of the Board. The board is composed of six [three] full-time members, resident citizens of the State of Texas for not less than two years, with terms

of office set at six years. **Appointments are made by the governor, subject to the advice and consent of the senate, so that terms of at least two members expire on January 31 of odd numbered years. Members shall serve until their successors are duly appointed and qualified.** (Texas Code of Criminal Procedure, Article 42.18, §3(a)-(c) [One appointment is made every two years. One member is appointed by the governor, one by the chief justice of the Supreme Court, and one by the presiding judge of the Court of Criminal Appeals, subject to the advice and consent of 2/3 of the Senate present (Texas Constitution, Article IV, §11)].

§141.3. Chairmanship. The chairmanship and vice chairmanship is designated [decided] by the governor [majority vote of the members] and is for a term of two years [and until his or her successor is qualified (Texas Code of Criminal Procedure, Article 42.12, §13)]. The chairman acts as spokesman for the board after obtaining the views and collaboration of his or her colleagues if present [whenever possible and practicable] (Texas Code of Criminal Procedure, Article 42.18, §5) [A majority of the board may elect a temporary chairman in the event the chairman is incapacitated or for any reason fails to serve a full term].

§141.4. Quorum. Major questions of policy and procedure require consideration of all members of the board. A majority of the board or any panel thereof shall constitute a quorum for the transaction of all business before it.

§141.5. Majority Vote. All decisions except executive clemency shall be made by simple majority vote. In matters other than executive clemency considered by the full board of six members, the chair will only vote on any decision when it is necessary to break a tie vote of the members voting on the matter.

§141.10. Official Seal. The board has adopted an official seal in compliance with Texas Code of Criminal Procedure, Article 42.18 [42.12], §5 [§13]. The seal is a circle with the words "Board of Pardons and Paroles, State of Texas" circularly arranged about the inner edge, and in the center of the circle there is a five-pointed star, together with the live oak and olive branches common to other official state seals.

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 December 31, 1986.

TRD 8700269 John W. Byrd
Executive Director
Board of Pardons and
Paroles

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(512) 459-2708

Parole Commissioners

★ 37 FAC §§141.21-141.25, 141.29

The Board of Pardons and Paroles proposes amendments to §§141.21-141.25 and 141.29, concerning origin and purpose, employment, authority, duties, minimum workload and designated duty stations. The amendments designate the duty station of parole commissioners as employees of the board rather than appointed officers, and omit the governor's office from decisions or review of parole or mandatory supervision cases as provided for in constitutional and statutory changes and amendments.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections as proposed as the amendments are for the purpose of conforming rules to the amendments of statutory and constitutional law. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§141.21. Origin and Purpose. The employment [appointment] of parole commissioners is [was] authorized by Senate Bill 589 [240], passed by the 69th [64th] Legislature, 1985 [1975], which amended the Texas Code of Criminal Procedure[,] by adding Article 42.18, [42.12] to include a new §14.1A [§7(a)-(c)], authorizing commissioners to aid and assist the board in the granting, denying, or revocation of parole, and in the conduct of parole violation hearings.

§141.22. Employment [Appointment]. There are authorized no less than six parole commissioners; to be employed by the board, who shall perform duties as directed by the board [one-third being appointed by the governor; one-third by the chief justice of the Supreme Court of Texas; and one-third by the presiding judge of the Texas Court of Criminal Appeals. One of the commissioners appointed by each of the appointing authorities shall reside in Walker County] Texas Code of Criminal Procedure, Article 42.18 [42.12], §7(a)-(c), [§4A)].

§141.23 *Authority* In matters of parole and mandatory supervision decisions to which assigned, the parole commissioners have the same duties and authority as the board members and may have such additional duties and authority as may be authorized from time to time by the board (Texas Code of Criminal Procedure, Article 42.18 [42.12], §7(c) [§14.A])

§141.24 *Duties* Parole commissioners shall personally interview inmates of the Texas Department of Corrections for parole at all units of the Texas Department of Corrections, and shall, acting in panels as set out in §§141.41-141.45 of this title (relating to Parole Panels), order [recommend] the grant, denial, or revocation of parole or mandatory supervision [to the governor]

§141.25 *Minimum Workload* Parole commissioners may [shall] conduct interviews on all units of the Texas Department of Corrections for the purpose of recommending the grant, denial, or revocation of parole and mandatory supervision [no less frequently than three working days per week, with exceptions] as authorized by the Board of Pardons and Paroles

§141.29 *Designated Duty Stations* To provide efficient coverage and access to all units of the Texas Department of Corrections, the Board of Pardons and Paroles may change the designated duty station of any commissioner to any location within the State of Texas upon days written notice and to temporarily alter the duty assignment of any commissioner or commissioners upon reasonable notice [except that one commissioner appointed by each appointing authority shall reside in Walker County]

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

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★ 37 TAC §141.27, §141.28

(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 Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 5031, Sam Houston Building, 201 East 14th Street, Austin.)

The Board of Pardons and Paroles proposes the repeal of §141.27 and §141.28,

concerning leave annual and illness and travel. The repeals delete provisions authorizing 30 days of annual leave a year for commissioners and authorizing travel reimbursement at the same rate as board members, because of the constitutional and statutory changes making commissioners state employees rather than appointive officials. These sections are therefore obsolete.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed repeals will be 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. Hagedorn also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with law changes making parole commissioners employees rather than appointive officials. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The repeals are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper or necessary.

§141.27 *Leave, Annual, and Illness*

§141.28 *Travel*

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

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Parole Panels

★ 37 TAC §§141.41-141.43, 141.45

The Board of Pardons and Paroles proposes amendments to §§141.41-141.43 and 141.45 concerning composition, duties and authority of parole panels, meetings, and majority vote. The amendments show the amended statutory authority citation and clarify the language of the sections to make clear that the decisions on parole and mandatory supervision made by the board or commissioners are final orders rather than recommendations to the governor, as required by constitutional and statutory amendments.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn also has determined that for each year of the first five years the sections are in effect, no public benefit is anticipated as a result of enforcing the sections. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.41 *Composition* A parole panel shall be composed of any three parole commissioners, or the Parole Board, or any combination thereof, as constituted [named] from time to time by the board. (Texas Code of Criminal Procedure, Article 42.18 [42.12], §7(c) [§14.A])

§141.42 *Duties and Authority* Parole panels may consider the [recommend] granting, denying, or revocation of parole, and may conduct [parole] violation hearings.

§141.43 *Meetings* Parole panels may consider information and case files and vote on parole release individually or may [shall] meet together from time to time as necessary for the conduct of business, and any such [all] meetings shall be conducted in compliance with the Open Meetings Act (Texas Civil Statutes, Article 6252-17.)

§141.45 *Majority Vote* All [case] decisions, except executive clemency, shall be by a majority vote of the members voting.

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

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Rulemaking

★ 37 TAC §141.51

The Board of Pardons and Paroles proposes an amendment to §141.51, concerning purpose of rules. The amendment replaces the slang expression "free world" with the synonymous term "community," for reasons of clarity. This amendment does not change the meaning of the section in any way.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hagedorn also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendment is proposed under the Texas Code of Criminal Procedures, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§145.51. Purpose of Rules. These rules and regulations, referred to as rules, are adopted for the purpose of facilitating the fair and uniform administration and enforcement of the pardon and parole laws of the state in a manner which attempts to assure both protection to the citizens of the state and the opportunity for offenders to adjust to the community [free world]. To the end that these objectives be attained, these rules shall be given a fair and impartial construction.

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

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Records and Reports

★ 37 TAC §141.71, §141.73

The Board of Pardons and Paroles proposes amendments to §141.71 and §141.73, concerning minutes of the board and confidential and privileged information. The amendment to §141.71 specifies that decisions of parole panels must be final and not partial or intermediate in nature before they become subject to public disclosure. Since parole panels are made up of at least three members whose consideration and decision of a case may be at different times, the board feels it wise to consider any case decision as pending until all votes are entered on the minute sheet. This amendment simply prohibits public disclosure of pending actions until they become final decisions.

The statutory citations in §141.73 are amended to reflect the amended statutes.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn also has determined that for each year of the first five years the sections are in effect there will be public benefits anticipated as a result of enforcing the sections, as the amendment cites statutory references as changed by the legislature. 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 Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§141.71. Minutes of the Board. All minutes of the board and parole panels, final decisions relating to parole, pardons, and clemency, statistical and general information concerning the parole program and system, including the names of paroled prisoners and data recorded in connection with parole services, shall be matters of public record and subject to public inspection at all reasonable times.

§141.73. Confidential and Privileged Information. All information obtained in conjunction with inmates of the Texas Department of Corrections subject to parole and release to mandatory supervision or executive clemency, or individuals who may be on parole or mandatory supervision or under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged

information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor, the board, and the commissioner upon request. (Texas Code of Criminal Procedure, Article 42.18, [42.12] §20 [§27].) It is further provided that this section shall not be construed so as to preclude access to administrative release revocation hearings by the public (§147.1 of the title (relating to Public Hearings)).

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

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Registration of Visitors and Fee Affidavits

★ 37 TAC §141.81, §141.82

The Board of Pardons and Paroles proposes amendments to §141.81 and §141.82, concerning registration of visitors and fee affidavits. The amendment to §141.81 clarifies the distinction between those visitors at the central office who present information or argument to board members or staff and those who appear or are subpoenaed to testify at a violation hearing. Those in the latter category are identified and sworn by the hearing officer, whereas the former category need to be registered in accordance with the statute. The amendment to §141.82 cites the amended statutory references.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn 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 clarification of language for ease of understanding. 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 Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article

42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary

§141.81 Registration of Visitors Any person who appears before the board or a parole panel, or before any board member, commissioner, or any staff member whether in an interview or at a hearing, **except those appearing as witnesses at a violation hearing**, for the purpose of submitting or presenting information or arguments for and in behalf of any person within the jurisdiction of the board, shall register in the record of the board as required by law (Texas Civil Statutes, Article 6252-23)

§141.82 Fee Affidavits Any person who appears before the board or any member, before a parole panel, or before a hearing officer for any of the purposes stated in §141.81 of this title (relating to Registration of Visitors), shall additionally submit, at the time of such appearance, an affidavit stating whether any fee has been or is to be paid for his/her services in the case, the amount of such fee, if any, and by whom such fee is paid or is to be paid (Texas Code of Criminal Procedure, Article 42.18 [42.12], §11 [§18])

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

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Interviews

★ 37 TAC §141.94

The Board of Pardons and Paroles proposes an amendment to §141.94, concerning no decision permitted. The amendment clarifies that the order of revocation of parole or mandatory supervision is made by the board and not by the governor as reflected in the constitutional and statutory changes.

E. E. Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Harry C. Green, general counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of en-

forcing the section will be compliance with changes in the constitution and statutes removing the governor from the parole decision process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendment is proposed under Texas Code of Criminal Procedure, which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§141.94 No Decision Permitted No decision to recommend or deny parole, to **order** [recommend] revocation of parole, or to recommend any form of executive clemency or the revocation thereof shall be made by the board or any member of the board and no decision to recommend parole or to recommend revocation thereof shall be made by any commissioner during such an interview. All such actions are by law, matters of public information and record, required to be taken in open meetings.

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

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Subpoenas

★ 37 TAC §141.101, §141.102

The Board of Pardons and Paroles proposes amendments to §141.101 and §141.102, concerning issuance and service and enforcement. The amendments provide correct statutory references and citation as required by the amended statutes. The amendments mandate no change in the sections providing for issuance and service and subpoenas by the board.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enfor-

ing the sections, as the amendments are to conform to statutory references in the sections to the amended statutes.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§141.101 Issuance

(a)-(b) (No change)

(c) When necessary to obtain the attendance of witnesses and/or the production of any of the items referred to in subsection (a) of this section at an administrative release (parole mandatory supervision) revocation hearing, the board may authorize hearing officers to cause the issuance of subpoenas signed by a board member in accordance with the law (Texas Code of Criminal Procedure, Article 42.18, §12).

§141.102 Service and Enforcement Subpoenas issued in accordance with the preceding §141.101 of this title (relating to Issuance) shall be served and may be enforced according to law (Texas Code of Criminal Procedure, Article 42.18 [42.12] §12 [§19]).

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

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Definition of Terms

★ 37 TAC §141.111

The Board of Pardons and Paroles proposes an amendment to §141.111, concerning definitions. The amendment is necessitated by amendments to the constitution and statutes. The term "violation hearing" is added as a synonymous term to revocation hearing, regional supervisor is added as synonymous with area supervisor. Class inmate is amended to reflect accrual of time credited to sentence, and Community Residential Reintegration Program is added as a synonymous term to halfway house and community residential facility. Early mandatory supervision is defined as a form of discretionary release to the term of mandatory supervision defined elsewhere.

Statutory references and citations are in accordance with law in the definition of executive director. Mandatory supervisor certificate is amended to authorize release from custody or imprisonment from any facility, not just the Texas Department of Corrections in accordance with the statutory amendments. Parole is defined as a discretionary release. Parole certificate is amended to document release from imprisonment anywhere and not just from the Texas Department of Corrections as authorized by amended law. The term parole officer is amended to show that they have the authority over all forms of administrative releases and not just those released to parole. The terms "parole panel," "parole plan," and "parolee" are amended similarly for like reasons. Pre-parole transfer is defined as the transfer of an eligible prisoner to a community residential facility all as defined in Texas Civil Statutes, Article 6166-4. Qualified victim or victim is defined as a person alive or deceased who is a victim in specified crimes of sexual assault, kidnapping, aggravated robbery or who are injured or killed as a result of crimes who have filed victim impact report statements and keep the board aware of any changes of address. Restoration of rights of citizenship is defined to reflect that it is an act of executive clemency which is conditional in clemency rights granted to that of right to vote and its consequences. All definitions are amended to show the changes in statutory and constitutional authority as needed.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hagedorn 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 provision of clarifying language to more clearly define terms used in the rules and procedures. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, PO Box 13401 Austin, Texas 78711.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

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

Administrative release (parole man-

datory supervision) revocation hearing, administrative release revocation hearing, [or] revocation hearing or violation hearing. **Are synonymous terms for** a hearing conducted under §§145.41-141.55 of this title (relating to Revocation of Administrative Release (Parole and Mandatory Supervision)), and for hearings, §§147.1-147.7 of this title (relating to General Rules for Hearings), and §§147.21-147.28 of this title (relating to Evidence), to determine whether the board will enter an order revoking the administrative release or recommend to the governor the revocation of the administrative release of any individual **subject to executive clemency.**

Area supervisor or regional supervisor -- **Are synonymous terms for** the regional staff officer supervising the parole officer to whom the parolee reports.

Class I inmate - Inmate of statutory Class I status for accrual [commutation] of time served as provided by law (Texas Civil Statutes, Article 6181-1).

Community residential facility - A facility certified and under contract to the board for the provision of residential placement services to administrative releases or in the certification process. Community residential facilities may also be referred to as halfway houses, residential treatment facilities, etc. **community residential reintegration programs.**

Constitutional and statutory references -- Articles of the Texas Constitution, the Texas Code of Criminal Procedure, [or] the Texas Civil Statutes, or Texas Penal Code.

Early mandatory supervision - **The discretionary release of a prisoner who has not been released to mandatory supervision from imprisonment who has 180 calendar days or less remaining to his minimum discharge date but not legal custody for rehabilitation outside prison walls under such conditions and provisions of supervision as the board may determine.** (Texas Code of Criminal Procedure, Article 42.18, §8(D)).

Executive director - The individual employed by the board pursuant to Texas Code of Criminal Procedure, Article 42.18 [42.12], §5 [13], who is responsible to the board for the conduct of the affairs of the agency. This is the same individual defined in Texas Code of Criminal Procedure, Article 42.18 [42.12] §2f [§2i], and referred to throughout the adult parole, probation, and mandatory supervision law. [The executive director is also the director of the Division of Parole Supervision, referred to in Texas Code of Criminal Procedure, Article 42.14, §2.h, and throughout the statute.] Agency division and section directors and heads are responsible to the executive director for the discharge of their duties.

Hearing officer - A staff member designated by the board and assigned to conduct an administrative release revocation hearing concerning one or more allegations

of violation of the terms and or conditions of parole, mandatory supervision, or conditional pardon. When used in connection with a hearing reopened under the provisions of §145.51 of this title (relating to Releasee's Motion to Reopen Hearing) and §145.52 of this title (relating to Procedure After Motion to Reopen is Granted, Time, Rights of the Releasee; Final Disposition), or a reinstatement hearing concerning whether an individual whose administrative release has been revoked should have such release reinstated by the board or governor (§145.71 of this title (relating to Reinstatement, Exceptional Circumstances, Hearing) and §145.72 of this title (relating to Terms and Conditions)), hearing officer means a parole panel or the member chairing same.

Inmate - A person incarcerated in the Texas Department of Corrections, other penal institution, or jail serving a sentence imposed upon conviction of a felony [crime].

Mandatory supervision certificate-- An order of the board, incorporating the terms and conditions of mandatory supervision, whether signed and agreed to by the prisoner or not, which authorizes the release of the inmate from imprisonment [the Texas Department of Corrections] to mandatory supervision.

Parole - The discretionary release of a prisoner from imprisonment but not from the legal custody of the state, for rehabilitation outside of prison walls under such conditions and provisions for supervision as the board may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency. For the purposes of revocation, the terms "parole" and "mandatory supervision" are interchangeable and reference to either one of said terms includes the other.

Parole certification - An order of a parole panel, incorporating a parole agreement which, when fully executed, authorizes the release of an inmate from imprisonment [the Texas Department of Corrections] on parole.

Parole officer - A person duly appointed by the director of parole supervision and assigned the duties of investigating and supervising administratively released [paroled] prisoners to see that the releasees [parolees] comply with the conditions of release [parole].

Parole panel - A three-member decision-making body authorized to act in administrative release [parole] matters.

Parole plan - Proposed community and place of residence and proposed employment or proposed provision for maintenance and care of the releasee [parolee].

Pre-parole transfer - The transfer of an eligible prisoner, as defined in Texas Civil Statutes, Article 6166-4, to a community residential facility, as defined in Texas Civil Statutes, Article 6166-4.

Qualified victim or victim - That person or relative of a deceased person or guar-

dian of a person who, as the case may be, was a person victimized by the prisoner or inmate as a result of his crime of sexual assault, kidnapping, aggravated robbery, or who suffered bodily injury or death as the result of the criminal conduct and who has filed a victim impact statement as required by law and has requested notification from the board concerning release of the inmate and has kept the board informed in writing of any and all changes in permanent mailing address in a timely fashion

Restoration of rights of citizenship

A [an unconditional] pardon limited to the restoration of the right to vote, which in turn restores any other civil rights conditioned upon the right to vote

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

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Chapter 143. Executive Clemency

Full Pardon and Restoration of Rights of Citizenship

★ 37 FAC §§143.1-143.3, 143.8, 143.10

The Board of Pardons and Paroles proposes amendments to §§143.1-143.3, 143.8, and 143.10, concerning authority to grant pardons, twelve months on parole, parolee discharging sentence, probated sentence, felony conviction, and request of governor. The amendments clarify to the public that it is not the primary jurisdiction of this board to retry the guilt or innocence of a convicted felon, but rather that the duty is primarily that of the courts and court officials. The amendment makes it clear that before the board will act on any recommendation to the governor for pardon on grounds of innocence of the crime convicted of, the applicant must furnish evidence of such a finding from the proper courts along with the recommendation from the trial officials for the board's recommendation. The amendment also references the amended constitutional and statutory authority for clemency considerations by the board.

Amendments to §143.2 and §143.3 are proposed to clarify that the statutory authority to recommend pardons for those successfully serving for 12 months on parole, or discharging their sentence, is limited

to the statutory language before the amendment to the statute made by the 59th legislature and was effective only for offenses and conviction prior to August 28, 1977. The statute as it now exists does not provide authority to the board for this type of clemency recommendation.

Amendments to §143.8 and §143.19 add language to clarify the sections as applied to sentences of probation and clemency including restoration of civil rights and restoration of firearm rights. The statutory authority for §143.10 is also changed to reflect the amended statute reference.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify language and to conform statutory references to the legislative changes in law. The amendments to §143.2 and §143.3 were necessary to conform the rules to statutory authority as amended. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g) which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper or necessary.

§143.1 Authority to Grant Pardons. Except in cases of treason or impeachment, after conviction, the governor may grant a full pardon and/or the restoration of the rights of citizenship upon the recommendation and advice of a majority of the board. (Texas Constitution, Article IV, §11, Texas Code of Criminal Procedure, Articles 48.01 and 48.03 [42.12, §24]). **On the grounds of innocence of the offense for which convicted the board will only consider applications for recommendation to the governor for full pardon upon receipt of:**

(1) a written unanimous recommendation of the current trial officials of the court of conviction; and/or

(2) a certified order or judgement of a court having jurisdiction accompanied by certified copy of the findings of fact (if any); and

(3) affidavits of witnesses upon which the finding of innocence is based.

§143.2 Twelve Months on Parole. When any prisoner has served for 12 months on parole for an offense committed on or

before August 28, 1977, in a manner acceptable to the board, upon request, the board may [shall] review the prisoner's record upon application therefore and make a determination whether to recommend to the governor that the prisoner be pardoned and finally discharged from the sentence under which he is serving [(Texas Code of Criminal Procedure, Article 42.12, §24)]. If the board determines not to recommend to the governor that the prisoner be pardoned, it may recommend to the governor that the prisoner be restored to the full rights of citizenship. (Texas Code of Criminal Procedure, Article 42.12, §24; Acts of the 59th Legislature, 1965, Volume 2, Chapter 722, page 317).

§143.3 Parolee Discharging Sentence. Whenever any prisoner who has been paroled for an offense committed on or before August 28, 1977, has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, the board may [shall] report such fact to the governor prior to the issuance of the final order of discharge, together with its recommendation as to whether the prisoner should be restored to citizenship [(Texas Code of Criminal Procedure, Article 42.12, §24)]. The board may, at this time, recommend to the governor a full pardon. (Texas Constitution, Article IV, §11, Code of Criminal Procedure, Article 42.12, §24, Acts of the 59th Legislature, 1965, Volume 2, Chapter 722, page 317).

§143.8 [Probated] Sentence of Probation, Felony Conviction. The board will consider recommending a full pardon and/or restoration of rights of citizenship for a [probated] sentence of probation only upon a showing of receipt of maximum relief available through the court of conviction, and then, only in an extreme or unusual circumstance which prevents the applicant from gaining a livelihood or in the event of loss of civil rights. The burden of showing such unusual conditions rests upon the applicant.

§143.10 Request of Governor. The board shall consider a recommendation for a full pardon, restoration of civil rights, or request for restoration of firearm rights in any case upon the request of the governor. (Texas Code of Criminal Procedure, Article 42.18 [42.12], §18 [25]).

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 December 31, 1986

TRD-8700279 John W. Byrd
Executive Director
Board of Pardons and
Paroles

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February 20, 1987
For further information, please call
(512) 459-2708

★37 TAC §143.11

The Board of Pardons and Paroles proposes new §143.11, concerning restoration of firearm rights. The board proposes the new section concerning partial and conditional clemency recommendations for restoration of firearm rights since the federal government has by legislation and practice pre-empted this area as far as the right to buy, possess, and transport firearms in interstate commerce. The federal authorities, through the secretary of the treasury, has statutory authority to exempt, upon proper application, anyone from the penalty imposed by law. This new section recognizes the jurisdiction of the secretary of the treasury and subordinates the recommendation of this board for conditional and partial clemency concerning firearm rights to the primary jurisdiction of federal law and the exemption provided thereunder.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hagedorn 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 negligible, if any. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, PO Box 13401 Austin, Texas 78711.

The new section is proposed under Texas Code of Criminal Procedures, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with the law as it may deem proper or necessary.

§143.11 Restoration of Firearm Rights. The board will consider recommending restoration of the right to receive, possess, bear, and transport in commerce a firearm only in extreme and unusual circumstances which prevents the applicant from gaining a livelihood, and only if the applicant:

(1) provides either proof of clearance by a previously granted full pardon or a request for such express restoration in a pending application for a full pardon from jurisdiction(s) of the relevant conviction(s), and

(2) provides proof of application under the United States Code, Title 18, §925 (c) for exemption, relief from disabilities to the secretary of the treasury, and furnishes copies of all relevant applications and responses thereto by the secretary including any final actions by said secretary.

This agency hereby certifies that the proposal has been reviewed by legal counsel

and found to be within the agency's authority to adopt.

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Conditional Pardon

★37 TAC §143.24

The Board of Pardons and Paroles proposes an amendment to §143.24, concerning the request of the governor for a consideration of a recommendation for a conditional pardon to conform the citation of statutory authority to the amended statute with no textual change to the section.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hagedorn 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 conform the statutory reference to the amended law. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§143.24. Request of Government. The board shall consider a recommendation for conditional pardon in any case upon the request of the governor. (Texas Code of Criminal Procedure, Article 42.18 [42.12], §18 [25])

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

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Reprieve

★37 TAC §143.31, §143.33

The Board of Pardons and Paroles proposes amendments to §143.31 and §143.33, concerning general rules and emergency reprieve to attend civil court proceeding. The amendment to §143.31 inserts the words "a majority of" before the board to make clear that the constitutional authority for the governor's authority to grant a reprieve upon the recommendation therefor by the Board of Pardons and Paroles requires a majority vote of the board for such recommendation.

The amendment to §143.33 inserts new language in subsection (b)(1) so that the board will have specific facts before it to determine the need for such a reprieve recommendation and the exact times involved. These details are necessary for the board's consideration of the request and the exact duration of the reprieve requested and/or recommended.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn 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 clarification of the language to make rules and procedures simpler for the public to understand. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g) which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§143.31 General Rules

(a) The governor may grant a reprieve upon the written recommendation of a majority of the board (Texas Constitution, Article IV, §11)

(b) (j) (No change)

§143.33 Emergency Reprieve to Attend Civil Court Proceedings

(a) (No change)

(b) The board will consider recommending an emergency reprieve to attend civil

court proceedings only upon receipt in writing of the following:

(1) a request for reprieve by the inmate or her representative stating the inmate's vested interest in the cause[;] and **the date his presence is required with reasons requiring his attendance if date is prior to date set for trial;**

(2) a letter signed by the presiding judge of the court in which the cause is pending, stating:

(A) (B) (No change.)

(C) that the presence of the inmate is an absolute necessity for the protection of his or [] her interest in the litigation, and that his or [] her deposition would not suffice to protect that interest; and

(D) (No change.)

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

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John W. Byrd
Executive Director
Board of Pardons and
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(512) 458-2708

★ ★ ★

Reprieve of Execution

★ 37 TAC §143.41, §143.43

The Board of Pardons and Paroles proposes amendments to §143.41 and §143.43, concerning governor's reprieve and procedure in capital reprieve cases. The amendments insert language to clarify that executive clemency can only be conditionally granted upon a recommendation therefor, by a majority of the board or upon recommendation of four out of six members. This is to distinguish the constitutionally authorized action from the parole and mandatory decisions which are statutorily authorized by a simple majority vote.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green, general counsel, 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 clarification of the language regarding the constitutional requirements of a majority of the board (four out of six) for clemency recommendations by the board to the governor. 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 Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with the law as it may deem necessary and proper.

§143.41 Governor's Reprieve

(a) (No change.)

(b) The governor shall have the power, upon the written and signed recommendation and advice of a majority of the board [or a majority thereof,] to grant a reprieve in any capital case at any time after conviction.

(c) (No change.)

§143.43 Procedure in Capital Reprieve Cases.

(a) (No change.)

(b) Upon receipt of an application for a board-recommended reprieve of execution, the board may either:

(1) grant the request upon affirmative vote of four board members and transmit it written, signed recommendation to the office of the governor,

(2)-(3) (No change.)

(c) When the board sets a hearing pursuant to subsection (b)(3) of this section, it shall notify the trial officials of the county of conviction of the attorney general of the State of Texas and allow any such official(s) or the designated representatives thereof, the opportunity to attend the hearing and/or to present any relevant [relative] information. At the time of notifying the trial officials the board shall also notify any representative of the family of the victim (who has previously requested to be notified) of the receipt of the application, the setting of a hearing, and of said representative of family member's rights to provide any written comments or to attend the hearing.

(d)-(h) (No change.)

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

Issued in Austin, Texas, on January 6, 1987

TRD-8700283

John W. Byrd
Executive Director
Board of Pardons and
Paroles

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For further information, please call

(512) 459-2708

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Commutation of Sentence

★ 37 TAC §143.52, §143.58

The Board of Pardons and Paroles proposes amendments to §143.52 and §143.58, concerning commutation of sentence, felony or misdemeanor, and request of the governor. The amendments change the statutory citations to reflect the statutory amendments and insert the word "written" before the words "request of governor", in §143.58 to reflect that all requests from the office of governor to the board are submitted consistently in writing to minimize any misunderstandings of the request.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn 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 correction of statutory references to the amended statute. 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 Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§143.52. Commutation of Sentence, Felony, or Misdemeanor

(a) (No change.)

(b) If the convicted person has the recommendation of two of the trial officials and no written communication is received from third trial official, the board shall give the remaining trial official at least 10 days notice that such a clemency recommendation is being considered by the board. (Texas Code of Criminal Procedure, Article 42.18 [42.12], §8(k) [§15(h)].)

(c) (No change.)

(d) The requirements of a recommendation of trial officials for commutation of sentence must include the following:

(1) a statement that the penalty now appears to be excessive;

(2) a recommendation of a definite term now considered by the officials as just and proper; and

(3) a statement of the reasons for the recommendation based upon facts directly related to the facts of the cases [case] and in existence, but not available to, the court or jury at the time of the trial, or a statutory change in penalty for the crime which would

appear to make the original penalty excessive

(e) (No change)

§143.58. *Request of the Governor.* The board shall investigate and consider a recommendation of commutation of sentence in any case, upon the **written** request of the governor. (Texas Code of Criminal Procedure, Article 42.18 [42.12], §18 [§25]).

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

Issued in Austin, Texas, on January 6, 1987

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Executive Director
Board of Pardons and
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For further information, please call
(512) 459-2708

★ ★ ★

★37 TAC §143.56

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Board of Pardons and Paroles proposes the repeal of §143.56, concerning commutation of sentence for blood donation. The repeal deals with the procedures for a recommendation for commutation of sentence for a blood donation because the procedure is no longer used. There are no longer any statutory authorizations for this procedure and the Texas Department of Corrections no longer requests such commutation recommendations from the board.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed repeal will be 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. Hagedorn 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 deletion of obsolete language because there is no longer any specific statutory authorization for either the Texas Department of Corrections or the Board of Pardons and Paroles to implement the sentence and it is therefore no longer available. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711

The repeal is proposed under Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper §143.56 *Commutation of Sentence for Blood Donation*

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

Issued in Austin, Texas, on January 6, 1987

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Executive Director
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Paroles

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(512) 459-2708

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Remission of Fines and Forfeitures

★37 TAC §§143.71-143.74

The Board of Pardons and Paroles proposes amendments to §§143.71-143.74, concerning remission of fine; remission of fine after reprieve; remission of bond forfeiture; and request of governor

The amendments to §§143.71-143.73 specify authentic documentary evidence of the trial officials' recommendations and official actions by requiring same to be on official letterhead or certified as official documents. The board feels this is the minimum authentication needed for its recommendation or consideration. The amendment to §143.74 conforms the statutory references to the amended statute.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Mr. Hagedorn 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 clarification of language and compliance with amendments to statutes. 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 Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to

adopt such reasonable rules not inconsistent with law as it may deem necessary and proper

§143.71. *Remission of Fine.*

(a) The board will consider a request to remit a fine upon the unanimous written recommendation of the trial officials, **said recommendation to be furnished upon official letterhead of each official.**

(b) The board will also consider a request to remit a fine, only for medical reasons, or reasons of financial hardship (loss of home or business, or the lack of support for family) or other compelling hardships only upon receipt in writing of the following information:

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

(5) the recommendation of a majority of the trial officials that the fine be remitted **to be furnished only on official letterhead of each official.**

§143.72. *Remission of Fine After Reprieve.* The board will consider a request to recommend that the governor remit a fine after satisfactory completion of a reprieve of fine upon receipt of a written request from the applicant or person acting for him or her and a recommendation of a majority of the trial officials, **to be furnished upon official letterhead of each official.**

§143.73 *Remission of Bond Forfeiture.* The board will consider a recommendation to the governor to remit a bond forfeiture upon receipt of:

(1) a written unanimous recommendation of the trial officials and the commissioner's court in the county of forfeiture **to be furnished upon official letterhead of each official;**

(2) a written request accompanied by the following

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

(D) a recommendation of the commissioner's court in the county in which final judgment of forfeiture was entered, **by certified copy of the court's order or on the official letterhead of the court or county judge;**

(E)-(F) (No change.)

(G) a statement from the sheriff or county treasurer as to whether or not the judgment or any part thereof has been paid or satisfied in any manner **on official letterhead of the appropriate official; and**

(H) (No change.)

§143.74 *Request of the Governor.* The board shall consider a recommendation for remission of fine or forfeiture in any case upon the request of the governor. (Texas Code of Criminal Procedure, Article 42.18 (42.12),) §18 [§25].)

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

Issued in Austin, Texas, on January 6, 1987

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February 20, 1987
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Chapter 145. Parole Parole Process

★ 37 TAC §§145.1-145.3, 145.5, 145.7-145.11, 145.14, 145.15

The Board of Pardons and Paroles proposes amendments to §§145.1-145.3, 145.5, 145.7-145.11, 145.14, and 145.15, concerning parole panel, denial of parole, initial review date; eligibility date, initial action upon review; favorable initial action notice to trial officials, subsequent action notice to trial officials, parole denied by the governor; subsequent parole review date, approved by the governor; further investigation, tentative parole release date, and parole certificate

The amendments to §§145.1, 145.2, 145.9, 145.11, and 145.15, add or delete language, the effect of which is to remove any reference to the governor or his office in any decision or processing concerning parole or mandatory release to comply with the constitutional and statutory changes removing the governor from the parole and mandatory release decision process. Also amendments are made where necessary to citations or referrals to reflect any changes or amendments in relevant statutes

The amendments to §§145.3, 145.5, and 145.14, clarify that these respective dates are tentative and subject to alteration dependent upon classification and other actions taken by the Texas Department of Corrections. Because they are of a tentative and changeable nature, the amendments are intended to reflect a wide discretion in specifying or altering them as need arises

The amendment to §145.7 adds paragraph (5), a recommendation for consideration of a pre-parole transfer of an eligible inmate who is within 180 days of parole eligibility. Any such transfer would be to an approved community residential facility as defined in Texas Civil Statutes, Article 6166x-4

The amendment to §145.8 inserts language requiring notice to qualified victims who file impact statements as required by law, said notices to be sent at least 10 days prior to release with the legal requirement that the board or panel will consider any responses received in compliance with law

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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

Mr. Hagedorn 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 compliance with constitutional and statutory changes removing the governor from the parole process, with Texas Department of Corrections classifications, and with statutory law (Texas Civil Statutes, Article 6166x-4). 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 Harry C. Green, General Counsel, P. O. Box 13401, Austin, Texas 78711

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper

§145.1 Parole Panel A parole panel may **consider for** [recommend to the governor the] parole [of] any eligible prisoner [confined in the Texas Department of Corrections], and upon the approval **by panel majority** [of the governor] may release such [a] prisoner on parole (Texas Code of Criminal Procedure, Article 42.18 [42.12], §7(c) **and (e) and §8(a), (c), and (d) [§§12, 14A, and 15].**)

§145.2 Denial of Parole If the **board** [governor] denies parole after favorable recommendation by a parole panel, or should a parole panel deny parole at any time during the parole process, the inmate shall be notified in writing with the reasons given for the decision

§145.3 Initial Review Date Each inmate shall be notified in writing of the scheduled initial parole review date. Such date shall mean the month and year **estimated for obtaining of initial parole eligibility on the sentences and of necessity is a tentative date subject to review or a subsequent review and alteration.**

§145.5 Eligibility Date The **tentative** initial eligibility date for parole consideration is set by calculating the time credit which **could** [would] **reasonably** be earned [by being continuously in Class 1]

§145.7 Initial Action Upon Review A case reviewed by a parole panel for parole consideration may be

- (1)-(2) (No change)
- (3) denied (serve-all), [or]
- (4) determined that the total situation seems to favor the inmate's release on

parole and further investigation, including notification of trial officials and investigation of the parole plan, should be developed prior to making a final decision (favorable initial action); or

(5) **recommended for consideration for pre-parole transfer to a community residential facility up to 180 days prior to reaching parole eligibility.**

§145.8 Favorable Initial Action Notice To Trial Officials and Certain Victims of Certain Crimes. When favorable initial action is taken, trial officials **and qualified victims who have filed impact statements** shall be notified **at least 10 days before release and any response shall be considered by a parole panel** [and given 10 days to respond] in compliance with the law (Texas Code of Criminal Procedure, Article 42.12, §15(f) [(e)], **Article 42.18, §8(f) and (k).**

§145.9 Subsequent Action Notice to Trial Officials. When the 10-day period to trial officials and victims has expired, the parole panel's decision may be

(1) denied for [favorable] parole **approval** [recommendation] at this time and set for review at a future specific month and year (set off),

(2) (No change)

(3) **approved** [recommended to the governor] for parole subject to an approved release plan

§145.10 Parole Denied by the Board [Governor]: Subsequent Parole Review Date.

(a) If the parole panel recommends parole and parole is denied by the **board** [governor], the next parole review month and year of the inmate will be computed by the board from the prior parole review month and year of the discharge date and calculated as follows

(1)-(3) (No change)

(b) If the **board** [governor] denies parole and desires to reconsider parole prior to the new review date, it [he] may request in writing that a parole panel bring the case up to date and resubmit it to the **board** [governor] for further consideration, if majority of the parole panel agree to do so.

(c) If a parole panel receives additional information on a case denied parole [by the governor] which it feels merits reconsideration prior to the scheduled review date, the case may be brought up to date for parole consideration and the board may resubmit the case [to the governor] with the reasons pointed out for the [governor's] **reconsideration** [consideration]

§145.11 Plan [Approved by the Governor: Further] Investigation If the parole panel recommends parole [and it is approved by the governor], the proposed plan shall be investigated by.

(1)-(2) (No change)

§145.14 Tentative Parole Release Date A tentative parole release date **may** [shall] be set **in conjunction with Texas Department**

of Corrections (TDC) on all approved parole plans unless it is [a parole panel has] determined that the case should be expedited.

§145.15 Parole Certificate.

(a) (No change)

(b) The parole approval is not effective or final until a formal parole agreement is executed by the inmate; the approval may be withdrawn by a parole panel [or the governor] at any time prior to the acceptance and execution by the inmate of the formal parole agreement which is contained in the parole certificate.

(c) (No change)

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

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John W. Byrd
Executive Director
Board of Pardons and Paroles

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(512) 459-2708

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★ 37 TAC §145.13

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Board of Pardons and Paroles proposes the repeal of §145.13, concerning pre-release program. The repeal is proposed because these centers for pre-release are no longer operated by the department and there is no reason to maintain this section in effect.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed repeal will be 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. Hagedorn also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The repeal is proposed under the Texas Code of Criminal Procedure, Article 42.18,

§8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§145.13. Pre-Release Program.

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

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★ 37 TAC §145.16

The Board of Pardons and Paroles proposes new §145.16, concerning parole in absentia. The new section describes procedures for processing applications for parole in absentia consideration for prisoners serving a Texas sentence in some other penal facility rather than the Texas Department of Corrections. The authority for parole in absentia comes from the amendment to the parole law codified in the Texas Code of Criminal Procedure, Article 42.18, §8. The procedure provided is as close as possible to the usual parole procedures, the main exceptions being that a personal, face-to-face interview between the inmate and a Texas parole official or employee is not always possible and therefore substitutes written communications therefor. The actual release procedures will be accomplished by the local personnel of the facility where parole release is accomplished. In all other respects, the parole in absentia is under the same rules as any other parole release.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. The effect on state government will be an estimated reduction in cost of \$500,000 each year in 1987-1991. The effect on local government will be an estimated reduction in cost of \$23,000 each year in 1987-1991. There will be no effect on small businesses.

Mr. Hagedorn also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a savings to the state as follows: By paroling eligible prisoners directly from other institutions, it saves the state the expense of transporting them to Texas Department of Corrections facilities be-

fore being released on parole and by releasing eligible inmates directly from other incarcerative facilities, the Texas Department of Corrections will not be required to support these inmates in TDC awaiting release. Supports costs are approximately \$33 per inmate per day. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under the Texas Code of Criminal Procedures, Article 42.18, §8(a) and (g), which provides the Board of Pardons and Paroles with the authority to release on parole any person confined in any penal or correctional facility who is eligible for parole, and authorizes the board to adopt such reasonable rules not inconsistent with law as it may deem proper or necessary with respect to eligibility of prisoners for parole.

§154.16. Parole in Absentia (Parole for Prisoners Not in Actual Physical Custody) Of the Texas Department of Corrections.

(a) Prisoners serving sentences for Texas crimes who are not in the actual physical custody of the Texas Department of Corrections are subject to the parole process as set out in this chapter and title, generally, in accord with the following:

(1) Applicants for parole in absentia may be interviewed by a parole panel member or other board agent at some point during the parole review process; however, the physical location of the prisoner and/or the nature of the case may preclude the granting of a face-to-face interview, in which case, written communication shall suffice.

(2) As necessary, in each case, the board will contact the trial officials in the case, the custodian of records at the institution where the prisoner has been incarcerated on his Texas sentence, and/or any other public official in an attempt to gather necessary pertinent information concerning the circumstances of the prisoner's offense(s), previous social history and criminal record; conduct, employment, and attitude in prison, and physical and mental health; in order that the parole panel to which the case is assigned may make an informed decision concerning parole eligibility and or suitability. After all relevant documents and information are assembled, the case will be considered by a parole panel. If denied, the case will be updated and reconsidered on its docket date if still in custody.

(3) Prisoners approved for release to parole in absentia and for whom a certificate has been issued will be released by the appropriate officer of the institution in which the prisoner is incarcerated, if any. When practical, if the institution is located within the State of Texas, an agent of the board may assist in the release process by ex-

plaining the terms and conditions of release which shall constitute notice to the parolee of the contents thereof. The certificate shall be countersigned by the institution's releasing officer. Parole in absentia releasees are subject to the same rules and conditions of release as all other administrative releasees.

(b) A prisoner released to parole in absentia on a Texas felony sentence shall, after release, be treated the same as a prisoner released on parole directly from the Texas Department of Corrections, whether supervised within the State of Texas or in another state under the Uniform Act for Out-of-State Parole Supervision - The Interstate Compact (Texas Code of Criminal Procedure, Article 42.11). Such parolees are subject to revocation for violation of the terms and conditions of their release pursuant to the provisions and procedures of this chapter and title relating to revocation of administrative release (parole and mandatory supervision).

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

Issued in Austin, Texas, on January 6, 1987.

TRD-8700289

John W. Byrd
Executive Director
Board of Pardons and
Paroles

Earliest possible date of adoption

February 20, 1987

For further information, please call
(512) 459-2708

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Terms and Conditions of Parole

★ 37 TAC §§145.21, 145.24-145.28

The Board of Pardons and Paroles proposes amendments to §§145.21 and 145.24-145.28, concerning terms and conditions of parole, visits to penal institutions—parolee under active supervision—annual report status, employment of parolees in positions requiring contact with persons of criminal background, nonreporting status, and restriction—monthly amount—payment—alteration. The amendment to §145.21 allows more flexibility in tailoring specific requirements of supervision to meet the particular needs of each releasee. The amendment is designed to reduce the number of specific rules from 12 or 13 to five in number, supplementing these with the imposition of one or more special conditions to meet the particular requirements of need or risk in any particular case.

The amendments to §§145.24-145.28 add clarifying language and delete obsolete language to make the sections consistent with the amendment to rules and conditions of release and conform them to the

amended constitution and statutes removing the governor from the process.

As Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green, general counsel, 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 tailoring of specific conditions of supervision to the needs and risks of the individual being supervised. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§145.21 Terms and Conditions of Parole.

The following terms and conditions of parole must be agreed to and accepted by the inmate as a prerequisite to parole. Continuation on parole is conditioned upon continuing compliance with the standard terms and conditions of parole and upon compliance with any special conditions imposed by a parole panel or the board or its authorized designate.

(1) Release and reporting. **Upon release from the institution, report immediately, as instructed to my parole officer; thereafter, report as directed and follow all instructions from my parole officer which are authorized by the board. If at any time it becomes necessary to communicate with my parole officer for any purpose and he/she is not available, I shall direct my communication to the Board of Pardons and Paroles, (512) 459-2700.**

[(A) I shall go directly to the destination approved by the Board of Pardons and Paroles.]

[(B) Upon arrival, I shall report (as instructed) immediately to the parole officer or person whose name and address appear on my parole certificate.]

[(C) I shall submit a full and truthful report to my parole officer, on the forms provided for that purpose, before the fifth day of each month or as instructed by my parole officer.]

[(D) I shall promptly and truthfully answer all inquiries directed to me and furnish all information requested of me by the Board of Pardons and Paroles or by my parole officer.]

[(E) If at any time it becomes necessary to communicate with my parole officer for any purpose and he/she is not available, I shall direct my communication to the Board of Pardons and Paroles, Room 711, Stephen F. Austin Building, Austin, Texas 78701, (512) 475-4525 or 475-3363.]

(2) **Legal obligation** [Employment and residence]. **I shall obey all municipal, county, state, and federal laws.**

[(A) I shall report to my place of employment; work diligently in a lawful occupation; and support my dependents, if any, to the best of my ability.]

[(B) I shall secure the written permission of my parole officer before changing my residence or place of employment, and will allow any representative of the Board of Pardons and Paroles to visit my residence and place of employment at any reasonable time.]

(3) **Residence** [Travel]. **I shall obtain the written permission of my parole officer prior to changing my place of residence.**

[I shall secure the written permission of my parole officer before I leave the state to which I am paroled, I will secure written permission of my parole officer to travel beyond the boundaries of the counties adjoining the county to which I am paroled.]

(4) **Travel** [Alcohol and drugs]. **I shall obtain the written permission of my parole officer prior to leaving the State of Texas.**

[(A) I shall not use alcoholic beverages of liquors to excess or in a manner injurious to my parole.]

[(B) I shall not go into, remain about, or frequent business establishments whose primary function is the sale of or dispensing of alcoholic beverages or liquors for on-premises consumption.]

[(C) I shall not illegally possess, use, or traffic in any narcotic drugs, marijuana, or other controlled substances. I further agree to participate in chemical abuse treatment programs in accordance with instructions from my parole officer.]

[(D) I shall freely cooperate and voluntarily submit to medical and/or chemical tests and examinations for the purpose of determining whether or not I am using or am under the influence of alcohol, narcotic drugs, marijuana, or other controlled substance.]

(5) **Weapons. I shall not own, possess, use, sell, nor have under my control any firearm, prohibited weapon, or illegal weapon as defined in the Texas Penal Code; nor shall I unlawfully carry any weapon nor use, attempt, or threaten to use any tool, implement, or object to cause or threaten to cause any bodily injury.** [I shall not own, possess, use, sell, nor have under my control any firearm or other prohibited weapon.]

(6) **Special conditions** [Associates]. **I shall abide by any special condition(s) imposed by the board; any such special conditions imposed upon release will be indicated**

on the face of this certificate by the letter(s) corresponding to the conditions as listed in the following subparagraphs.

(A) **The releasee shall participate in a maintenance free program for the treatment of alcohol abuse (Special Condition A)** [I shall avoid association with persons of criminal background unless specifically approved by my parole officer in writing]

(B) **The releasee must complete the Basic Adult Education Program (Special Condition B)** [I shall not enter into any agreement to act as an informer or special agent for any law enforcement agency]

(C) **The releasee shall submit to urinalysis at discretion of the supervising officer (Special Condition C).** [I shall not enter into any agreement to act as an informer or special agent for any law enforcement agency.]

(D) The releasee shall submit to halfway house placement (Special Condition D).

(E) The releasee shall not operate a motor vehicle without written permission from the supervising officer or the board (Special Condition E)

(F) The releasee shall not open a checking account without written permission from the supervising officer or the board (Special Condition F)

(G) The releasee shall be released to detainer or plan (Special Condition G)

(H) The releasee shall participate in an MH/MR counseling program (Special Condition H)

(I) The releasee shall not use methadone (Special Condition M)

(J) The releasee shall participate in a maintenance free program for the treatment of substance abuse (Special Condition N).

(K) The releasee shall comply with any other condition as specified (Special Condition O)

(L) The releasee shall participate in a psychological counseling program (Special Condition P)

(M) Instate releasees shall make restitution payments as required by the supervising officer in an amount to be set by the board. By the 10th of each month, payments (cashier's check or money order) shall be paid by out-of-state releasees to the Texas Board of Pardons and Paroles (P.O. Box 13401, Capitol Station, Austin, Texas 78711), total amount to be set by the board (Special Condition R)

(N) A mandatory releasee shall be under intensive supervision for not less than 180 days. A parole releasee shall be under intensive supervision (Special Condition N)

(O) The releasee shall totally abstain from the use of alcoholic beverages of any kind (Special Condition T)

(P) The releasee shall submit to a urinalysis (Special Condition P)

(Q) The releasee shall not contact

victim(s) of the instant offense without written permission from the supervising officer of the board (Special Condition Q)

(7) **General provisions** [Legal obligation: I shall obey all municipal, county, state, and federal laws]

(A) **I hereby agree to abide by all rules of parole and all laws relating to the revocation of parole, including, but not limited to, appearance at any hearings or proceedings required by the law of the jurisdiction in which I may be found or of the State of Texas. I further agree and consent that the receiving state, if I am under compact supervision, or any state wherein I may be found while on parole or under parole jurisdiction, may conduct such hearings as the board shall deem necessary, proper, or which may be required by law.**

(B) **I shall pay, during the period of my supervision, any and all outstanding fines, court costs, and fees adjudged against me, to the clerk of the court of conviction, and I agree to provide my supervising officer with documentation verifying the payment by me of said amounts.**

(C) **If, at the time of release, I have 12 calendar months or more to serve before I discharge my sentence, will be required to pay a supervision fee for each month I am required to report to a supervising officer as instructed by my supervising officer.**

(D) **In the event I am granted the privilege of residing in and being under the supervision of any other state or territory under the inter-state compact for the supervision of parolees and Texas Code of Criminal Procedure, Article 42.11, and in consideration of being granted parole by the Texas Board of Pardons and Paroles, or for any reason I may be outside of the State of Texas, I hereby agree to and I hereby do waive extradition to the State of Texas from any jurisdiction in or outside the United States where I may be found; I do hereby further agree that I will not in any manner contest any effort by the State of Texas, or any state of jurisdiction, to return me to the State of Texas.**

(8) **General provisions**

(A) I shall consult with my parole officer before entering marriage

(B) I agree to abide by any special conditions of parole as stipulated in writing by the Board of Pardons and Paroles or my parole officer

(C) I hereby agree to abide by all rules of parole and all laws relating to the revocation of parole, including, but not limited to, appearance at any hearings or proceedings required by the law of the jurisdiction in which I may be found or of the State of Texas. I further agree and consent that the receiving state, if I am under compact supervision, or any state wherein I may be found while on parole or under parole jurisdiction, may conduct such hearings as the board shall deem proper or which may be required by law

(9) **Out-of-state parole.** In the event that I am granted the privilege of residing in

and being under the supervision of any other state or territory under the Interstate Compact for the Supervision of Parolees and Texas Code of Criminal Procedure, Article 42.11, and in consideration of being granted parole by the Texas Board of Pardons and Paroles or for any other reason I may be outside of the State of Texas, I hereby agree and I hereby do waive extradition to the State of Texas, from any jurisdiction in or outside the United States where I may be found. I do hereby further agree that I will not in any matter contest any effort by the State of Texas, or any state of jurisdiction, to return me to the State of Texas.]

§145.24 Visits to Penal Institutions—Parolee Under Active Supervision. [As exceptions to Rule 6(A), §145.21(6)(A) of this title (relating to Terms and Conditions of Parole) A parolee may enter a penal institution during the period of supervised parole under the following circumstances:

(1)-(3) (No change)

§145.25 Annual Report Status.

(a) Annual report status is a **releasee** [parolee] status which releases the parolee from the original terms and conditions of **release** [parole], releases the **individual** [parolee] from the direct supervision of a parole officer, and is conditional upon the **releasee's** [parolee's] acceptance of and compliance with the annual report rules.

(b) A **releasee** [parolee] may be considered for annual report status upon the recommendation of his or her parole officer after having been satisfactorily under [parole] supervision for

(1) a minimum of 12 months in **released** [paroled] from a sentence of less than 10 years, or

(2) a minimum of 18 months is **released** [paroled] from a sentence for a term of 10 or more years, or

(3) a minimum of two years if **released** [paroled] from a life sentence

(c) (No change)

(d) Transfer to annual report status in no way affects the authority of a parole panel or board to issue a prerevocation warrant or [recommend the revocation or the authority of the governor or to] revoke a **release** [parole]. The **releasee** [parolee] remains subject to the jurisdiction of the board and subject to its orders while an annual report status

(e) A parole panel may, at its discretion and without notice, set aside an order of transfer to annual report status and impose any additional rules or **conditions of release** [parole] as the parole panel may deem to be proper

(f) The rules for a **releasee** [parolee] on annual report status are [] **listed in the following paragraphs.**

(1) Each year, from the date of the acceptance of this order for annual report, the **releasee** [parolee] will [submit, in writing to the director, Division of Parole Supervision, 8610 Shoal Creek Boulevard, P.O. Box

13401 Capitol Station, Austin, Texas 78711, Room 711, Stephen F. Austin Building, Austin, Texas 78701 (residing in state) **report in writing to the regional supervisor of the region of parole supervision** where releasee was residing when first placed on annual reporting status, **said report** showing his or her **current** employment and residence. This annual report will be made until the term of his or her **administrative release** [parolee] expires. Failure to submit this report each year could result in his or her being returned to active **release** [parolee] supervision, or the issuance of a pre-revocation warrant or **summons** for his or her arrest and possible return to the Texas Department of Corrections.

(2) The **releasee** [parolee] will [in all respects conduct himself honorably,] obey all federal, state, and municipal laws and ordinances, [work diligently at a lawful occupation, and support his dependents, if any, to the best of his ability.]

(3) The **releasee** [parolee will not associate with persons having a criminal record and] will not communicate with any inmate of a penal institution nor visit any such institution, unless **approved** [requested] in writing to do so by a warden or general manager of the penal institution, the original or a copy of such **approval** [request] shall be immediately sent to the Director of Parole Supervision, **8610 Shoal Creek Boulevard**, [P.O.] Box 13401, Capitol Station, Austin, Texas 78711, by the **releasee** [parolee].

(4) **The releasee shall not own, possess, use, nor have under his or her control any firearms, prohibited weapons, or illegal weapons as defined in the Texas Penal Code; nor shall he unlawfully carry any weapon nor use, attempt, or threaten to use any tool, implement, or object or threaten to cause any bodily injury.** [The parolee will cooperate with and abide by any written instructions given by the Board of Pardons and Paroles, or any of its duly authorized officers.]

(5) **The releasee will report, in writing, the fact of any arrest or change of residential address within five days of its occurrence, to the supervisor of the region of the Division of Parole Supervision in the region where releasee was residing when first placed on annual report.** [The parolee will not own, possess, use, sell, or have under his or her control any firearms or other prohibited weapons.]

(6) The parolee will report in writing, the fact of any arrest within five days of its occurrence to the Director, Division of Parole Supervision, P.O. Box 13401, Capitol Station, Austin, Texas 78711 (phone (512) 459-2711).]

§145.26 Employment of Releasees [Parolees] in Positions Requiring Contact with Persons of Criminal Background. [As an exception to parole Rule (6)(A), §145.21(6)(A) of this title (relating to Terms and Conditions of Parole), and annual report Rule 3, §145.25(f)(3) of this title (relating to Annual Report Status)] **A releasee** [parolee] may ac-

cept employment with approved half-way house programs, drug abuse or alcohol abuse programs upon the specific approval of the **board or its designate** [director of parole supervision].

§145.27 Nonreporting Status.

(a) Nonreporting status is a **releasee** [parolee] status which releases the **releasee** [parolee] from the terms and conditions of annual report status and is conditional upon the **releasee's** [parolee's] acceptance of and compliance with the nonreporting status rules.

(b) **A releasee** [parolee] may be considered for nonreporting status upon the recommendation of his or her parole officer after having been on annual report status for four years; if

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

(c) (No change.)

(d) Transfer to nonreporting status in no way affects the authority of the **board** [governor] to revoke a parole. The **releasee** [parolee] shall remain subject to the jurisdiction of the board and subject to its orders while on nonreporting status.

(e) (No change.)

(f) The rule for a **releasee** [parolee] on nonreporting status is, the **releasee** [parolee] will [in all respects conduct himself or herself honorably,] obey all federal, state, and municipal laws and ordinances, [work diligently at a lawful occupation, support his or her dependents, if any, to the best of his or her ability,] and the **releasee** [parolee] will report, in writing, the fact of any arrest or **change of residence** within five days of its occurrence, to the **executive director, 8610 Shoal Creek Boulevard**, [Division of Parole Supervision, Room 711, Stephen F. Austin Building,] P.O. Box 13401, Capitol Station, Austin, Texas 78711 (phone (512) 459-2700 [475-4525]), **will not communicate with any inmate of a penal institution nor visit any such institution, unless approved in writing to do so by a warden or general manager of the penal institution (the original or a copy of such approval shall be immediately sent to the executive director at the previously listed address); shall not own, possess, use, sell, nor have under his control any firearm, prohibited weapon, or illegal weapon as defined in the Texas Penal Code; nor shall he unlawfully carry any weapon nor use, attempt, or threaten to use any tool, implement, or object to cause or threaten to cause any bodily injury.**

§145.28 Restitution, Monthly Amount, Payment, Alteration.

(a) A special condition requiring the parolee to pay restitution or reparation to the victim(s) of his or her crime(s) shall be imposed, in accordance with §145.21(8)(B) of this title (relating to Terms and Conditions of Parole), when an amount of restitution or reparation is established by the court which sentenced the prisoner to his or her term of incarceration and entered

(1) in an order [granting or] revok-

ing probation; or

(2)-(3) (No change.)

(b) A parole panel, as designated by the board, shall establish an amount of monthly payments for **releasees** [parolees] required to pay restitution or reparation under subsection (a) of this section. This monthly amount shall be determined in consideration of the **releasee's** [parolee's] projected earning capacity and in consultation with the supervising officer, provided that, a **releasee** [parolee] may not be required to pay more, during the period of supervision, than the total amount specified by the court which sentenced him or her to incarceration, as provided in subsection (a) of this section. The **releasee** [parolee] shall be notified in writing of the monthly amount established in his or her case and the **releasee** [parolee] will be responsible for paying that amount thereafter.

(c) The amount specified by the court which sentenced the prisoner to his or her period of confinement shall be entered on the **releasee** [parolee] certificate, together with the special condition referred to in subsection (a) of this section.

(d) After release, and upon initial reporting by the **releasee** [parolee], as instructed under the terms of the **releasee** [parolee] certificate, the supervising parole officer will enter on the arrival notice under special conditions, the method by which payment will be made.

(e) **Releasees** [Parolees] under active supervision within the State of Texas will make the monthly restitution payments to the supervising parole officer by cashier's check or money order payable to the Texas Board of Pardons and Paroles on or before the 10th day of every month, beginning with the month following notification of the **releasee** [parolee] of the monthly amount established in his or her case. The supervising parole officer will forward the restitution payment by memorandum to the Chief Accountant, Board of Pardons and Paroles, P.O. [Post Office] Box 13401, Capitol Station, Austin, Texas 78711.

(f) **Releasees** [Parolees] in annual report status, in nonreporting status, or under supervision in a state other than Texas will remit their monthly restitution payments by cashier's check or money order to the Chief Accountant, Board of Pardons and Paroles, P.O. [Post Office] Box 13401, Capitol Station, Austin, Texas 78711, to arrive there on or before the 10th day of each month, beginning with the month following notification of the **releasee** [parolee] of the monthly amount established in his or her case.

(g) The chief accountant shall

(1) (No change.)

(2) maintain records and accounts on:

(A) **releasees** [parolees] paying restitution; and

(B) (No change.)

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

(h) If, at any time during the period of parole supervision, the **releasee's** [parolee's] financial circumstances change so as to warrant a change in the monthly amount said **releasee** [parolee] is able to pay, then a parole panel, as designated by the board, may alter the amount of the monthly payment, with a written notice of the **releasee** [parolee] of said action and the effective date thereof.

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

Issued in Austin, Texas, on January 6, 1987

TRD-8700290

John W. Byrd
Executive Director
Board of Pardons and
Paroles

Earliest possible date of adoption
February 20, 1987

For further information, please call
(512) 459-2708



Revocation of Administrative Release (Parole and Mandatory Supervision)

★ 37 TAC §§145.41-145.53, 145.55

The Board of Pardons and Paroles proposes amendments to §§145.41-145.53, and 145.55, concerning allegation of violation, review and initial disposition, prerevocation warrant, issuance, notice of allegations, counsel, request for hearing; waivers, procedure after waiver and admission, procedure after request for hearing, time, schedule; notice, location, hearing officer; prehearing conference, purposes, procedure, rights of the administrative releasee in the revocation process, administrative release revocation hearing, review of administrative release revocation hearing record, report and recommendation of the hearing officer, final board disposition; releasee's motion to reopen hearing, procedure after motion to reopen is granted, time, rights of the releasee, final disposition, revocation of administrative release (parole, mandatory supervision) recommendation, proclamation, warrant, and revocation without prejudice.

The amendment to §145.41 modifies the section, where needed, to remove the governor from the parole process but leave the governor in the process where the case is one involving the grant or revocation of an act involving executive

clemency, adds language involving issuing a summons as well as a warrant for requiring the appearance of a releasee at a violation hearing, adds clarifying language to the process for revocation of releasees convicted of a felony committed while on administrative release status without requiring the releasee's personal appearance at a hearing and providing a method for notice and supplying of documentary evidence before revocation.

The amendment to §145.43 adds language specifying under what limitations an appointed attorney is provided a releasee in a violation hearing where the releasee is not under arrest, and adds subsection (e), which specifies the criteria used in determining the need for appointment of an attorney.

The amendment to §145.45 shortens the time limit on providing revocation hearings from 90 days to 70 days, adds paragraph (3) to subsection (g) and adds new language to subsection (h), and provides an exemption from the requirement for conducting a hearing at the situs of arrest or violations in case the releasee has been hospitalized at a remote location.

The amendment to §145.46 clarifies the fact that calling of a prehearing conference in any case is discretionary and under the control of the assigned hearing officer.

The amendment to §145.48 (b) adds language allowing the hearing officer to modify the bifurcation of any hearing if agreement of the releasee and his attorney, if any, is first obtained.

Sections 145.49 and 145.50 are amended to bring their terminology in line with the current personnel assignments of the board by changing the term "staff attorney/coordinator of hearings" to the "staff person(s)".

All amendments add clarifying words and correct any citations to the amended statutes and make clear when the governor is or is not involved in the process.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green 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 clarification of language or changes taking the governor out of parole and mandatory supervision decisions or statutory citation corrections to amended statutes. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§145.41 Allegation of Violation Review and Initial Disposition

(a) (No change.)

(b) A parole panel shall review the information and make an initial determination to:

(1) [request the governor to] order the issuance of a prerevocation warrant;

(2) order the issuance of a notice of **allegations and a summons to appear at an [allegation of] administrative release violation [violations] hearing;**

(3) continue the **supervision** [release] of the alleged violator pending disposition of any **criminal** charges;

(4) (No change.)

(5) Recommend **processing the file for revocation under modified administrative procedures by written notice to the inmate of the intent and reason for revocation without personal appearance at a time certain allowing for submission of written information before final processing,** [and request the governor to issue a revocation warrant] provided that this action shall be taken only when the releasee has committed a felony offense during the time of his or her release and has been convicted at the trial court level and sentenced to a **term of** penal incarceration for the offense, whether said conviction is appealed or not.

(A) Revocation of administrative release under **paragraph** [subsection] (b) (5) of this **subsection** [section] shall be accomplished administratively and a releasee proceeded against hereunder shall not be entitled to an administrative release revocation hearing.

(B) After the panel has acted under **paragraph** [subsection (B)] (5) of this **subsection** [section], further proceedings shall be **as follows** [in accord with §145.53 of this title (relating to Revocation of Administrative Release (Parole, Mandatory Supervision) Recommendation, Proclamation, Warrant)]:

(i) **The hearing section staff will obtain documentation of the relevant felony conviction and sentence.**

(ii) **A written notification containing the alleged rule violation along with a description of the documentation relied upon for proof; a definite date at least 45 days hence when final action for revocation will be taken, and an address to which additional information may be sent for consideration by the board before final action for revocation, will be sent to the releasee at his address of incarceration or residence.**

(iii) **After the time limit passes for final action the panel will consider all information assembled in the case and enter its final order.**

(C) (No change)

§145 42 Prerevocation Warrant, Issuance

Upon the receipt of an order of the **board** or governor, a prerevocation warrant shall issue to appropriate law enforcement authorities authorizing any sheriff, peace officer, or other addressee named therein to arrest and hold the named releasee until such time as he or she may be placed in the custody of an agent of the Texas Department of Corrections, or until further order of the governor or the board.

§145 43 Notice of Allegations, Counsel; Request for Hearing, Waivers

(a) (No change)

(b) The alleged administrative release violator shall be notified of his or her right to the assistance of a retained attorney during the administrative release revocation hearing, and of his or her **conditional** right to have an attorney appointed if he **or** } she is indigent.

(c) Upon written request by the releasee accompanied by an executed pauper's affidavit, an attorney shall be appointed to represent the alleged violator during the revocation hearing. **But if said alleged violator has been issued a summons to a hearing and remains under supervision and is not incarcerated so as to be able to work and earn money so as to be able to retain an attorney then and in that event the fact of indigency and the need for an attorney will be determined before an attorney is appointed.**

(d) **Any** [The alleged] violator **except those issued a summons** shall, at the time of service of notice of alleged violation(s), be given the opportunity to make a request for a revocation hearing, or to waive in writing the right to a revocation hearing. Written waivers must include an admission of at least one violation of the terms and conditions of release. At the time of the execution of such a waiver and admission, the releasee shall be informed that the board will, in all probability, **revoke or in cases subject to executive clemency** recommend to the governor that his or her administrative release be revoked. Any hearing previously requested may be waived in writing in accordance with this section at any time prior to the hearing.

(e) **In determining the indigency of any releasee to qualify for appointment of counsel the board shall cause inquiry to be made of all income, assets, and reasonable and necessary expenses of releasee and this determination shall be final. In addition to the determination of indigency, the board shall also inquire into and determine need for counsel appointment based on whether or not releasee makes a colorable denial or voices reasonable justification or mitigation of any alleged rule violation(s); considering the relative complexity of the case and the ability, or lack thereof of the releasee to articulate and present his colorable denial(s), mitigation, or justification(s).**

§145 44 Procedure After Waiver and Admission Upon receipt of an admission of violation of the terms and conditions of administrative release and waiver of the right to an administrative release revocation hearing, a parole panel shall review the case and make a final disposition by

(1) recommending to the governor the revocation of **a conditional pardon or other clemency** [administrative], release or **ordering revocation of an administrative release**; or

(2) (No change)

§145 45 Procedure After Request for Hearing, Time, Schedule, Notice, Location, Hearing Officer

(a) A revocation hearing shall be scheduled and held within a reasonable time after the date of arrest on the warrant or of the **summons to** [request for] such hearing, if no warrant has issued.

(b) For the purposes of these sections, a reasonable time shall be construed to be not longer than **70** [90] days from the date of arrest under the warrant or **date of service of a summons** [request], unless the releasee is detained, incarcerated in another state or unavailable to Texas authorities for any one of the following reasons:

(1)-(6) (No change)

(c) In the case of a releasee unavailable to Texas authorities under the circumstances described in subsection (b) of this section a reasonable time shall be construed to mean **70** [90] days from the date said releasee becomes or is made available to Texas authorities.

(d) Any releasee charged with violation of the terms and or conditions of his or her administrative release may, in the discretion of the board, be granted the opportunity to waive his or her right to a timely hearing under the provisions of this section, in writing, for the purpose of allowing the adjudication of pending felony criminal charges prior to the conduct of the revocation hearing or for other good cause shown; provided that he/she shall remain incarcerated pursuant to the terms of the prerevocation warrant (if any) pending hearing. (Texas Code of Criminal Procedure, Article **42.18** [42.12], **§14(a)** [§22])

(e) (No change)

(f) Not less than 10 days prior to the revocation hearing, unless said time limit is waived in writing or by failure to object at the hearing, the alleged administrative release violator shall be personally served with written notice of

(1)-(4) (No change)

(5) his or her right to **request** [request] the hearing officer to call a prehearing conference pursuant to the provisions of §145 46(a) of this title (relating to Prehearing Conference, Purposes, Procedure), and

(6) (No change)

(g) The administrative release revocation hearing shall be held at or near the location of the alleged violations or arrest unless,

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

(3) **the releasee is being held in a hospital or other facility for diagnosis or treatment of a physical or mental condition.**

(h) In the case of an administrative releasee situated as described in subsection (g)(1), (2), or (3) of this section, the revocation hearing may be held either at the unit of the Department of Corrections to which the releasee is assigned upon his or her return thereto, or any other unit of the Department of Corrections, **at the hospital or other facility where he or she is being held**, or at or near the place of the alleged violations or arrest in the discretion of the board. A releasee assigned to supervision in a state other than Texas (subsection (g)(1) of this section) is subject to the sections and laws respecting revocation which apply in said other state and or these sections, as applicable.

(i) (No change)

§145 46 Prehearing Conference; Purposes; Procedure

(a) The hearing officer assigned to conduct a revocation hearing **may** [shall], on his **or her** own motion or at the request of the administrative releasee or his or her attorney, call a prehearing conference within a reasonable time after the notices described in §145 43 of this title (relating to Notice of Allegations, Counsel, Request for Hearing; Waivers) and §145 45 of this title (relating to Procedure After Request for Hearing; Time, Schedule, Notice, Location, Hearing Officer) have been served. Such prehearing conference shall be scheduled so as to allow sufficient time for any necessary additional preparation by any party, as agreed on by the parties and the hearing officer, prior to the conduct of the revocation hearing. The scheduled date of the revocation hearing may be changed at the time of the prehearing conference to accommodate said need.

(b)-(d) (No change)

§145 47 Rights of the Administrative Releasee in the Revocation Process The administrative releasee shall be entitled to the following rights in the revocation process (except for releasees revoked without a hearing in accord with §145 41 (b) (5) of this title (relating to Allegation of Violation: Review and Initial Disposition))

(1) (No change)

(2) disclosure to the releasee, at the revocation hearing, of the evidence which will be relied upon in determining whether to **order revocation**, or recommend to the governor that his or her administrative release be revoked,

(3)-(7) (No change)

(8) **the conditional right** to be represented by legal counsel, either retained or appointed, as provided in §145 43(b), (c), and (e) of this title (relating to Notice of Allegations, Counsel, request for Hearing; Waivers). Said right of representation shall in no event arise prior to the time the administrative releasee is interviewed by a representative of the board after arrest and or service of **summons**, or of notice of allegations of viola-

tion of administrative release. However, this section shall not be interpreted so as to preclude consultation with counsel prior to said interview.

§145.48. Administrative Release Revocation Hearing

(a) (No change.)

(b) The hearing shall be a bifurcated hearing with separate consideration of factual issues relating to the alleged violations of administrative release and general and specific factual issues relating to the releasee's adjustment while on release or under supervision, or both. The hearing shall not proceed to the adjustment phase unless it is shown to the satisfaction of the hearing officer by a preponderance of the credible evidence, that the releasee did in fact violate one or more of the terms or conditions of his or her release, or both, **or by agreement with the releasee and/or his attorney, if any.**

(c) At the close of the hearing or within a reasonable time thereafter, the hearing officer shall collect and/or prepare and forward to the board

(1) (No change.)

(2) a summary report of the hearing separately setting out

(A) (No change.)

(B) conclusions of law; **if any,**

(C) a recommendation for final disposition of the case by the board; **and**

(3) (No change.)

(d) (No change.)

§145.49. Review of Administrative Release Revocation Hearing Record, Report and Recommendation of the Hearing Officer

(a) The board **panel** shall refer the record of the hearing and the report and recommendation of the hearing officer to the **relevant staff persons** [attorney coordinator of hearings] on receipt thereof.

(b) The staff [attorney coordinator of hearings] shall review the record of the hearing and the hearing officer's report and recommendation and take one of the following actions:

(1) approve the record of the hearing and the report and recommendation of the hearing officer and refer them to the **board or board panel** for final disposition in accordance with their terms, or

(2) (No change.)

(c) (No change.)

§145.50. Final Board Disposition

(a) After a case is referred to the **board or board panel** by the staff [attorney coordinator of hearings] in accordance with §145.49 of this title (relating to Review of Administrative Release Revocation Hearing Record, Report, and Recommendation of the Hearing Officer), the board shall make final disposition in the case **no later than the thirtieth (30) day.**

(b) The **board or board panel** shall review the record of the hearing, the report, and recommendation of the hearing officer together with any recommendation of the

staff [attorney coordinator of hearings] and dispose of the case by taking one of the following actions

(1) **order revocation or in appropriate clemency cases** recommend to the governor that the administrative release in question be revoked, only if the hearing officer has recommended revocation.

(2) (No change.)

(3) direct the staff [attorney coordinator of hearings] to refer the case back to the hearing officer for further development of factual or legal issues with or without reopening the hearing

(c) If final board disposition is an **order to revoke** or a recommendation to the governor to revoke the administrative release, the administrative releasee and his or her attorney, if any, shall be so notified in writing and be provided with a copy of [all exhibits offered or admitted into evidence, or both, at the hearing together with] the report and recommendation of the hearing officer and notice of his or her right to move for reopening of the hearing under §145.51 of this title (relating to Releasee's Motion to Reopen Hearing)

(d) If final board disposition is to withdraw the prerevocation warrant, **if any,** and continue the release under the same or modified conditions, or, where the sentence has expired, release to discharge, the board shall order the prerevocation warrant, **if any,** withdrawn, the imposition of any special conditions called for by the evidence in the case, and/or in its discretion, the issuance of an appropriate letter of reprimand. The releasee shall also be provided with copies of documents pertinent to the hearing of his case, as outlined in subsection (c) of this section

(e) If the board orders the case referred back to the hearing officer for further development under subsection (b)(3) of this section, then the case shall be referred back to the **board or board panel** in accordance with the procedures prescribed in §145.48(c) and (d) of this title (relating to Administrative Release Revocation Hearing.), and §145.49 of this title (relating to Review of Administrative Release Revocation Hearing, Record, Report, and Recommendation of the Hearing Officer.), for final disposition after such further development of factual or legal issues as is necessary under the circumstances

§145.51. Releasee's Motion to Reopen Hearing

(a) When the releasee receives notice that it [the board] has **been** determined to make final disposition of the case by **revoking the administrative release** [recommending to the governor that his or her administrative release be revoked], he or she shall have 10 days from the date of receipt of said notice to request a reopening of the case for further development of factual or legal issues. Such a reopening shall be granted under the following circumstances or on the following grounds, or both, only

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

(b) Any such request for reopening made under this section must be in writing and delivered to the board or placed in the United States mail (certified, return receipt requested) and addressed to the staff **counsel** [Attorney Coordinator of Hearings], **P.O.** [Post Office] Box 13401, Capitol Station, Austin, Texas 78711

(c) On receipt of any such request for reopening, the staff **counsel** [attorney coordinator of hearings] shall cause the same to be transmitted to the board **counsel** [attorney coordinator of hearings] for final action on the request. Whenever such a transmittal includes such a response, the releasee and his **or her** attorney, if any, shall be provided with a copy of same

(d) (No change.)

(e) When a releasee's motion for reopening under this section is granted, the releasee shall be deemed to have consented to such further reasonable delay in the final disposition of his **or her** case as shall be required for the procedure described in §145.52 of this title (relating to Procedure After Motion to Reopen is Granted, Time, Rights of the Releasee, Final Disposition)

§145.52. Procedure after Motion to Reopen is Granted, Time, Rights of the Releasee, Final Disposition

(a) when the board **panel** disposes of a releasee's motion to reopen under §145.51 of this title (relating to Releasee's Motion to Reopen Hearing by Granting Said Motion), the case shall be **disposed of or** referred to a parole panel **or hearing officer** for final disposition in accordance with this section and the previous disposition of the case by the board under §145.50(b) of this title (relating to Final Board Dispositions) shall be set aside and of no force and effect

(b) The purpose of the further proceedings before the parole panel **hearing officer** under this section shall be as specified by the board **panel** in its order granting the releasee's motion to reopen pursuant to §145.51 (d)(1) of this title (relating to Releasee's Motion to Reopen Hearing)

(c) when the parole panel **or Hearing Officer** convenes the reopening of the hearing, it shall have before it the entire record previously compiled in the case, including

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

(4) any response or recommendation of the staff **counsel** [attorney coordinator of hearings] regarding the record, report, or recommendation of the hearing officer or the releasee's motion to reopen

(d) The parole panel **or hearing officer** before which a case is reconvened under this section shall give due weight to the findings of fact and conclusions of law entered in the hearing officer's report, except to the extent that such findings may be undermined or called into question in the board's order for reopening pursuant to §145.51(d)(1) of this title (relating to Releasee's Motion to Reopen Hearing) When the parole panel **or hearing**

officer, on the basis of proceedings before it under this section, determines not to give weight to one or more findings of fact or conclusions of law duly entered in the hearing officer's report, it shall specify which findings or conclusions or both, are rejected, the reasons therefor, and whether new findings or conclusions, or both, are to be substituted or added, or both, to the report.

(e) In carrying out its responsibility under subsection (d) of this section, the parole panel or **Hearing Officer** may, in its discretion, hear new evidence offered by the releasee or the board's representative.

(f) At the conclusion of the proceedings before the parole panel or **Hearing Officer**, or within a reasonable time thereafter, the parole panel or **Hearing Officer** shall make final disposition of the case by taking one of the following actions:

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

(g) (No change.)

§145.53. *Revocation of Administrative Release (Parole, Mandatory Supervision) Recommendation, Proclamation, Warrant.*

(a) After the time limits for a request for reopening under §145.51 of this title (relating to Releasee's Motion to Reopen Hearing) have expired, or any such request thereunder has been finally acted upon, or a request to revoke has been made under §145.41 (b)(5) of this title (relating to Allegation of Violation: Review and Initial Disposition), the board's recommendation to revoke the administrative release shall be transmitted, if appropriate, together with the record of the case, to the office of the governor:

(b) (No change.)

(c) If the governor revokes the administrative release **or if the board orders the revocation**, upon receipt by the board of the governor's proclamation of revocation **or upon the board's issuance of a proclamation of revocation**, the proclamation shall be made a part of the releasee's permanent file and a copy may be delivered to the Texas Department of Corrections or to such other penal institution in which the revoked releasee may be incarcerated.

(d) Also, upon receipt of the governor's proclamation of revocation **or upon issuance of the board's order to revoke a release**, a revocation warrant shall issue and be transmitted and be transmitted to the proper authorities authorizing and directing any sheriff, peace officer, warden or other addressee named therein to arrest and hold the name revoked releasee, and to deliver him or her to the Texas Department of Corrections or yield him or her to the custody of officers of the Texas Department of Corrections for return thereto.

§145.55. *Revocation Without Prejudice* In the event that an administrative releasee is incarcerated in an institution of the Texas Department of Corrections to serve a sentence for a new conviction for a crime committed prior to incarceration for the sentence

for which he or she was administratively released, or to serve a sentence for a previous conviction for which judgement became final while on administrative release, the board may, on request of the releasee in writing **or upon its own motion**, revoke the administrative release without prejudice to the releasee, in order to enable him or her to receive good time credit on the original sentence. Any such revocation without prejudice **may** [shall] be effected only upon the written request of the releasee **or** [and then only] in the sound discretion of the board.

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

Issued in Austin, Texas, on January 6, 1987.

TRD-8700291 John W. Byrd
Executive Director
Board of Pardons
and Paroles

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February 20, 1987

For further information, please call
(512) 459-2708

★ ★ ★

Reparole after Revocation

★ 37 TAC §145.62

The Board of Pardons and Paroles proposes an amendment to §145.62, concerning review dates. The section governs eligibility for rep parole of releasees within one calendar year of their return to custody as a result of having a previous release revoked. This amendment allows credit toward eligibility for all time spent incarcerated in any jail or penal institution as a direct result of the revocation process. This is consonant with court decision requiring the Texas Department of Corrections to credit all time served in custody on the sentence of record.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hagedorn 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 compliance with court decisions which require the Texas Department of Corrections to give inmates credit for calendar time spent in jail pending return to the Texas Department of Corrections. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, P.O. Box 13401, Austin, Texas 78711.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§145.62. *Review Dates*

(a) Initial review dates for revoked parolees are determined according to the statutory requirements of parole eligibility if the revoked parolee is also serving a sentence for a new conviction. If parole eligibility for a new conviction is less than one year from the date of his/her return to custody [prison] on the revocation process, the initial review for rep parole consideration may be set one year from the date of his/her return to custody [prison] on the revocation process, notwithstanding the fact of possible earlier eligibility on the new conviction.

(b) If the revoked parolee is not also serving a sentence for a new conviction, he/she may be set for initial review for rep parole consideration one year from the date of his/her return to custody [prison] on the revocation process.

(c) (No change.)

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

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Reinstatement of Administrative Release (Parole and Mandatory Supervision) After Revocation

★ 37 TAC §145.71

The Board of Pardons and Paroles proposes an amendment to §145.71, concerning reinstatement, exceptional circumstances, and hearing. The amendment replaces terminology no longer applicable because of changes in personnel organization and staffing, replaces the term "attorney/coordinator of hearings" with "legal staff," also to clarify that due to constitutional and statutory changes the governor is no longer involved in parole or mandatory release revocations.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Harry C. Green, general counsel, 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 provision of clarifying language and removal of the governor from parole and mandatory supervision process in accordance with changes in constitutional and statutory law. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§145.71 Reinstatement, Exceptional Circumstances, Hearing

(a) (No change)

(b) A request for reinstatement of a revoked administrative release may be addressed to the board and should specify the purported exceptional circumstances which justify such action, as follows:

(1) judicial reversal of a judgment of conviction of [for] a criminal offense, which offense constituted an underlying factor in the initial revocation decision;

(2)-(3) (No change)

(c) (No change)

(d) Upon review of the releasee's request for reinstatement of administrative release, along with the transmittal of the staff counsel [attorney coordinator of hearings] the board shall:

(1) order [recommend to the governor] that the revoked administrative release be reinstated;

(2)-(3) (No change)

(e) If the board grants a reinstatement hearing, the case shall be referred by the board to a parole panel or hearing officer for the conduct of such hearing, to be held within a reasonable time of the granting of such request at a unit of the Department of Corrections where the revoked releasee is incarcerated or other convenient location, in the discretion of the parole panel or hearing officer.

(f)-(h) (No change)

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

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**Standards and Certification
Procedures for Community
Residential Facilities**

★37 TAC §§145.81, 145.86, 145.98

The Board of Pardons and Paroles proposes amendments to §§145.81, 145.86, and 145.98, concerning community services section, certification team report, recommendation, and standards relating to facility financial affairs. The amendments change the statutory reference in §145.81 and add language defining and requiring demonstrated public support before certification as suggested by the Sunset Commission review of this agency, and facilitate an accountability audit of each facility.

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green, general counsel, 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 reflection of the amended statutes cited, provision for public hearings in the facility certification procedure as suggested by sunset review, and clarification of language. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§145.81 Community Services Section. In order to carry out the provisions of Texas Code of Criminal Procedure, Article 42.18 [42.12], §8(H) [§15(h)], mandating utilization of halfway houses, referred to in these sections as community residential facilities, for the housing and supervision of administrative releases, there is hereby created the Community Services Section. The Community Services Section falls under the authority of the Institutional Services Division of the Texas Board of Pardons and Paroles. The section will be supervised by an administrator who will report directly to the director of Institutional Services. The administrator will provide overall direction for the section staff.

§145.86 Certification Team Report, Recommendation

(a)-(b) (No change)

(c) As a part of the certification requirements and as a certification by and a con-

tract with the board, each facility will be required to demonstrate by documentation that it has established and will maintain a broad cross-section of community approval and support for commencing or continued operation in the area of its residential facility. It is expressly provided that at any time, in the opinion of the board, that the evidence provided to demonstrate said community support is inadequate and in such event, the board may require that the facility schedule, hold, and provide transcripts of testimony and proceedings of an adequate public hearing on the establishment or continuance of the residential service at the facility location before certification is granted or continued.

(d)(c) Whenever the certification team recommends against certification, it shall specify any deficiencies in the applicant community residential facility which warrant such a recommendation.

§145.98 Standards Relating to Facility Financial Affairs. The community residential facility will manage its financial affairs in accordance with the guidelines and regulations set out herein.

(1) A copy of the annual budget, including [and] a cost estimate per client and a copy of the last independent audit performed will be attached to the material for inclusion in the working file.

(2) The budget should reflect and anticipate the following:

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

(C) provisions for a standard system of internal fiscal control, including:

(i) a written policy statement for the purchase and receipt of orders, including an organizational chart listing all positions with names of persons occupying those positions which receive or disburse funds, property, or supplies;

(ii)-(iv) (No change)

(D)(E) provisions to bond facility staff who have responsibility for funds;

(F)(F) provisions for the maintenance of employee time records.

(3) The facility will allow any authorized representative of the board access to any and all financial records at any reasonable time for the purpose of verifying or rechecking client cost per day figures and monitoring compliance with contractual requirements.

(4) The facility must arrange with its independent auditor for inclusion in the annual audit all information on items specified as follows:

(A) total dollar amount of contributions made by each board client resident, identified by name and Texas Department of Corrections number;

(B) specific details describing any business transaction between the facility and any director, board member, officer, or employee of the facility which compensate in whole or in part for services rendered to board client residents;

(C) description of amounts and

sources of contributions other than Board of Pardons and Paroles which compensate in whole or in part for services rendered to board client residents;

(D) description of any instances of simultaneous or duplicative charges of expenditures against board funds and any other service(s) which result in double payment for service(s) or supplies

(5)(14) As a result of the certification statement in subparagraph (2) of this section, a facility may be certified although no annual independent outside audit is provided for in its budget if the facility is operated as a subsidiary of, or by or under the authority of, a larger parent organization with which the board has an umbrella contract, covering three or more individual facilities, provided that a suitable substitute for the audit is offered by the parent [larger] organization.

The suitability of any such substitute shall be determined by the board.

(6) The facility should be aware that strict compliance with requirements of this section is required before certification to contract issues or continues.

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

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Chapter 147. Hearings General Rules for Hearings

★ 37 IAC §§147.1, 147.2, 147.6,
147.7

The Board of Pardons and Paroles proposes amendments to §§147.1, 147.2, 147.6, and 147.7, concerning public hearings, authority of hearing officers, record, and decisions. The amendments to §147.1 and §147.2 conform the statutory references to the amended statutes and add warrants and other documents to the material authorized to be issued by hearing officers. The amendment to §147.6 adds clarifying language to indicate discretion of the board on how to copy for production under open record request a recording of a revocation hearing. The amendment to §147.7 adds the words "if any."

Al Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green, general counsel, 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 provision of citations of amended statutes and clarifying language. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§147.1. Public Hearings

(a) (No change.)

(b) The general provisions that all information obtained in connection with persons under the supervision of the division shall be confidential and privileged (Texas Code of Criminal Procedure, Article 42.18 [42.12], §20 [§27], and §141.73 of this title (relating to Confidential and Privileged Information) does not apply to revocation hearings which are, by statute, public hearings (Texas Code of Criminal Procedure, Article 42.18 [42.12], §15 [§22]).

(c) (d) (No change.)

§147.2. Authority of Hearing Officers

(a) A hearing officer shall have the following authority:

(1)-(6) (No change.)

(7) to issue on behalf of the board subpoenas, warrants, and other documents authorized by and signed by a board member in accordance with the statutory authority (Texas Code of Criminal Procedure, Article 42.18 [42.12], §12 [§19] and §14) and the sections for the issuance of subpoenas herein (§141.101 of this title (relating to Issuance)), §145.46(b)(2) of this title (relating to Pre-hearing Conference, Purposes, Procedure) and §145.47(4) and (5) of this title (relating to Rights of the Administrative Releasee in the Revocation Process);

(8)-(11) (No change.)

(b) (No change.)

§147.6. Record

(a) (No change.)

(b) All hearings shall be electronically recorded in their entirety, and at the board's option shall be either copied or transcribed upon the request and deposit of estimated costs by any party.

§147.7. Decisions

(a) (No change.)

(b) A final decision shall include findings of fact and conclusions of law, if any, separately stated.

(c) (No change.)

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

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Paroles

Earliest possible date of adoption
February 20, 1987

For further information, please call
(512) 459-2708

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Chapter 149. Mandatory Supervision Selection for Mandatory Supervision

★ 37 IAC §149.11, §149.16

The Board of Pardons and Paroles proposes amendments to §149.11 and §149.16, concerning release order and early release. The board amends §149.11 and §149.16 to change the statutory citation to the amended statutes.

E. E. Hagedorn, director, Budget and Planning, has determined that for the first five-year period the proposed sections will be 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.

Harry C. Green, general counsel, 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 that the amendments correct citations to amended statutes and minor clarifying language. 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 Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The amendments are proposed under Texas Code of Criminal Procedures, Article 42.18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§149.11. Release Order. The board, or a parole panel designated by the board, shall order the release of any prisoner who meets the requirements as set out in the Texas Code of Criminal Procedure, Article 42.18 [42.12] (amended 1985 [1977]), and the rules of this board.

§149.16. Early Release. If an inmate has 180 calendar days [six months] or less remaining on the maximum term of his or her

sentence and has not reached the criteria set for mandatory supervision release under the Texas Code of Criminal Procedure, Article 42.18 §8(c), [42.12 §15(c)] the board, upon its own motion or that of the inmate, may order the inmate released to mandatory supervision. This action shall only be taken if.

(1)-(2) (No change)

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

Issued in Austin, Texas, on January 6, 1987

TRD-8700297 John W. Byrd
Executive Director
Board of Pardons and
Paroles

Earliest possible date of adoption
February 20, 1987

For further information please call
(512) 459-2708

★ ★ ★

★37 TAC §149.15

(Editor's note. The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Board of Pardons and Paroles proposes the repeal of §149.15, concerning pre-release program. The board repeals §149.15 dealing with the pre-release program as applied to mandatory releases for the same reasons as expressed in the repeal of §145.13 as the Texas Department of Corrections no longer operates pre-release centers for inmates.

E. E. Hagedorn, director, Budget and Planning has determined that for the first five-year period the proposed repeal will be 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.

Harry C. Green, general counsel, 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 section will be that the repeal is no longer applicable because Texas Department of Corrections no longer operates any pre-release program. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Harry C. Green, General Counsel, PO Box 13401, Austin, Texas 78711.

The repeal is proposed under the Texas Code of Criminal Procedures, which pro-

vides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary and proper.

§149.15. Pre Release Program

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

Issued in Austin, Texas, on January 6, 1987

TRD-8700298 John W. Byrd
Executive Director
Board of Pardons and
Paroles

Earliest possible date of adoption
February 20, 1987

For further information please call
(512) 459-2708

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. Texas Department of Human Services Chapter 73. Civil Rights Subchapter PP. Hearing Procedure

★40 TAC §73.4102, §73.4110

The Texas Department of Human Services (DHS) proposes in its civil rights chapter, amendments to §73.4102 and §73.4110; the repeal of §73.4111, and new §73.4111 and §73.4113, concerning attendance at the hearing, the effect of an administrative determination of intentional program violation, notification of hearing decision and presentation of the department's case. Section 73.4102 is amended to clarify who may attend the hearing. In §73.4110, subsection (d) has been added regarding the client's right to appeal the amount of overpayment determined by the hearing officer. In §73.4111, a new procedure is added for client notification in cases involving intentional program violation. In §73.4113, the responsibilities of the DHS representative in the administrative disqualification hearing are added.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the repeal or sections will be 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 or sections.

Mr. Packard also has determined that for each year of the first five years the repeal or sections are in effect, the public benefit anticipated as a result of enforcing the repeal or sections will be current sections concerning client's rights in fair hearings.

There is no anticipated economic cost to individuals who are required to comply with the repeal or sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-730, Texas Department of Human Services, 222-E, PO Box 2960, Austin, Texas 78769, within 30 days of publication in this *Texas Register*.

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

§73.4102 Attendance at Hearing. Although, at the household member's request, [If a household member chooses, a DHR representative must attend the hearing.] friends and relatives may [also] attend, [] the hearing is not open to the public. **If space is limited, the hearing officer may limit the number of people attending the hearing.** [The household member or DHR representative attends the hearing. The household member may request the presence of a DHR representative at least 10 days before the hearing. Otherwise, the DHR representative may either attend the hearing or be available by telephone to allow all participants to ask questions and hear his responses.]

§73.4110 Effect of an Administrative Determination of Intentional Program Violation.

(a) If a hearing officer finds that a household member committed an intentional program violation, the household member is disqualified from the Food Stamp Program for the following periods:

- (1) six months for the first **intentional program violation determination;**
- (2) one year for the second **intentional program violation determination;**
- (3) permanently for the third **intentional program violation determination.**

(b)-(c) (No change)

(d) **Although the hearing officer's decision regarding the intentional program violation is final, the appellant may appeal the caseworker's computation of the amount of overpayment.**

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

Issued in Austin, Texas, on January 14, 1987

TRD 8700398 Mark W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption
February 20, 1987

For further information please call
(512) 450-3766

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★ 40 IAC §73.4111

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 Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 which provides the department with the authority to administer public assistance programs.

§73.4111 Notification of Hearing Decision

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

Issued in Austin, Texas, on January 14, 1987

TRD 8700397 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
February 20, 1987
For further information, please call
(512) 450-3766

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★ 40 IAC §73.4111, §73.4113

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 which provides the department with the authority to administer public assistance programs.

§73.4111 Notification of Hearing Decision

(a) The hearing officer notifies the household member of his decision in the case on the notice of decision of administrative disqualification hearing form.

(b) If the household member did not appear at the hearing, the hearing officer holds the notice form for 10 days to allow the individual to present good cause for failing to attend.

(c) The food stamp worker notifies the household member of the effect of the hearing officer's decision in the case on the notice of disqualification for intentional program violation form.

§73.4113 Presentation of the Department's Case

The DHS representative is responsible for presenting the department's case in the administrative disqualification hearing. The DHS representative may choose to present the case in person or by the use of teleconference equipment. If either the hearing officer or the household member requests, the DHS representative must attend the hearing in person. Such a request, however, must be made 10 days before 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 January 14, 1987

TRD-8700400 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
February 20, 1987
For further information, please call
(512) 450-3766



Name: Tiffany Wimberly
Grade: 12
School: Plano Senior High School, Plano

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be re-published with the changes.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Child Nutrition Programs

Child Care Food Program

★ 40 TAC §12.4, §12.25

The Texas Department of Human Services (DHS) adopts amendments to §12.4 and §12.25, without changes to the proposed text published in the November 28, 1986, issue of the *Texas Register* (11 TexReg 4843).

The justification for amending the sections is to incorporate United States Department of Agriculture policy issued July 21, 1986, by the Southwest Regional Office.

The amendments as amended will function by specifying that day home providers who have been found guilty of fraud, including cases in which adjudication is deferred, are ineligible for participation effective with the court sentence. The providers may not be approved for further participation for the duration of the sentence of the court.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public 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 January 14, 1987.

TRD 8700399
Marlin W. Johnston,
Commissioner
Texas Department of
Human Services.

Effective date: February 4, 1987.
Proposal publication date: November 28, 1986.
For further information, please call
(512) 450-3766.

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Chapter 85. General Licensing Procedures

Subchapter III. Social Work Certification

★ 40 TAC §§85.6003, 85.6009, 85.6018

The Texas Department of Human Services (TDHS) adopts amendments to §85.6003 and §85.6009 and new §85.6005 and §85.6029, concerning social work certification, without changes to the proposed text published in the October 28, 1986, issue of the *Texas Register* (11 TexReg 4478). Section 85.6018 is being adopted with changes based on public comment.

The adoption of the amendments and new sections is justified to clarify existing provisions in the Code of Ethics, recognition as a private practitioner, and inactive status. The new sections explain eligibility requirements for certification and further define the terms relevant to the Code of Ethics.

The adoption of the amendments and new sections will function to increase the protection of consumers of social work services because the ethical principles by which social work practitioners must provide professional services will be more clearly understood.

Three comments were received regarding the adoption. Representatives for the Society for Clinical Social Workers and the National Association of Social Workers as well as one individual commented. All commentators requested that §85.6108(4) delete the requirement for a written description because it would increase the workload and cost to practitioners. The commentators also suggested that much of the material in §85.6108(4) and (5) was procedural and not ethical. The department agreed and thus deleted the requirement for a written description of services and the strictly procedural material. In addition, the department made editorial changes to §85.6018(4), (5), and (8) to further clarify the provisions of the Code of Ethics.

The following sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§85.6003. Recognition.

(a) (No change.)

(b) Private practice--A private practitioner of social work is one who, on either a full or part-time basis, is responsible for his own practice, establishes his own conditions of exchanges with his clients, and identifies himself as a social work practitioner in offering services. A social worker is considered in private practice if he provides social work services with sole responsibility for the client, regardless of the organizational structure in which he provides the services.

(1) (No change.)

(2) The requirements for recognition as an independent private practitioner are:

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

(D) Documentation of continued participation in and identification with the social work profession.

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

(5) The independent practice of clinical social work requires recognition as both an Advanced Clinical Practitioner (ACP) and a private practitioner.

(c) (No change.)

§85.6009. Expiration and Renewal.

(a)-(e) (No change.)

(f) Certificate holders may request to be placed in an inactive status rather than renew their certification if they are not currently employed as a social worker or are living outside of Texas. The fee for the inactive status is half that of certification. Inactive status is granted for a 12-month period and may be extended each year if the certificate holder remains eligible according to the requirements of this subchapter. The department does not require continuing education during the period of inactive status.

§85.6018. Code of Ethics. Social workers certified by the department must observe and comply with the code of ethics. Engaging in unethical conduct or conduct that discredits the profession of social work is grounds for disqualification of a certificate holder. Violation of any of the following ethical principles may be regarded as engaging in unethical conduct or conduct which discredits the profession of social work:

(1) (2) (No change.)

(3) A social worker must not engage in sexual acts with a client or with a person who has been a client within the past

year. A social worker must not provide social work services to a person with whom he has had a sexual relationship.

(4) A social worker must give the client a clear description of what the client may expect in the way of services, reports, fees, billing, and schedules.

(5) A social worker must not give or receive from an individual or agency any form of commission, rebate, or other remuneration for referring clients for services.

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

(8) A social worker must not violate a position of trust by knowingly committing any act detrimental to a client.

(9)-(10) (No change.)

(11) A social worker must attempt to make appropriate referrals as indicated by the client's need for services. Referral should be timely.

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

Issued in Austin, Texas, on January 13, 1987.

TRD-8700365

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 15, 1987
Proposal publication date: October 28, 1986
For further information, please call
(512) 450-3766

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★40 TAC §85.6005, §85.6029

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public 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 January 13, 1987.

TRD-8700366

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 15, 1987
Proposal publication date: October 28, 1986
For further information, please call
(512) 450-3766

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Name: Mickey Stoddard
Grade: 12
School: Plano Senior High School, Plano

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 *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Adult Probation Commission

Friday, January 16, 1987, 9 a.m. The Program Committee of the Texas Adult Probation Commission made an emergency addition to the agenda for a meeting held in Suite 600, Building B, 8100 Cameron Road, Austin. The addition concerned supplemental funding of Reeves County. The emergency status was necessary because the information was omitted from the agenda.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Austin, Texas 78753, (512) 834-8188

Filed: January 17, 1987, 11:58 a.m.
TRD-8700412

Friday, January 16, 1987, 10 a.m. The Texas Adult Probation Commission met in emergency session in Suite 600, Building B, 8100 Cameron Road, Austin. According to the agenda summary, the commission heard the program services report, supplemental funding reports from Reeves County, the Restitution Center Program's feasibility studies (information only, no action required) for Bastrop and Harris Counties, Jefferson County continuation funding, Jefferson County budget adjustment, El Paso County budget adjustment, and Taylor County budget adjustment, and considered spectrum of sanctions concerning the preliminary staff response to Judge Callan's motion. The emergency status was necessary because the information was omitted from agenda.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188

Filed: January 14, 1987, 11:58 a.m.
TRD-8700413

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Texas Department of Agriculture

Thursday, February 19, 1987, 11 a.m. The Texas Department of Agriculture will meet in Suite 103, 1801 North Lamar, Dallas. Ac-

ording to the agenda, the department will hold an administrative hearing to review alleged violation of the Texas Agriculture Code, §76.116(a)(1), by Simon D. Cannon, holder of private applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583

Filed: January 14, 1987, 1:46 p.m.
TRD-8700414

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Texas Alcoholic Beverage Commission

Monday, January 26, 1987, 1:30 p.m. The Texas Alcoholic Beverage Commission will meet in the hearing room, Third Floor, 1600 West 38th Street, Austin. According to the agenda, the commission will approve minutes of the October 27, 1986, meeting, consider administrator's and staff's report of agency activity; and approve affidavits of destruction of tested alcoholic beverages.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500

Filed: January 13, 1987, 1:20 p.m.
TRD-8700376

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Texas Antiquities Committee

Friday, January 30, 1987, 9:30 a.m. The Texas Antiquities Committee will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will approve minutes of meetings #93 and #94, and TAC meetings of September 12 and November 14, 1986, consider the nomination of state archeological landmarks, designate state archeological landmarks; consider update on Trinity and Brazos railroad depot, hear Antiquities Code Revisions Subcommittee report, and staff reports. The committee also will meet in executive session to

discuss El Paso litigation, possible Cleburne litigation, and personnel matters regarding J. Barto Arnold III and Molly Ficklen Godwin.

Contact: William C. Griggs, P.O. Box 12276, Austin, Texas 78711, (512) 463-6098.

Filed: January 14, 1987, 8:32 a.m.
TRD-8700395

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Automated Information and Telecommunications Council

Friday, January 16, 1987, 9 a.m. The Automated Information and Telecommunications Council made an emergency addition to the agenda of a meeting held in Room 102, John H. Reagan Building, 105 West 15th Street, Austin. The addition concerned a statewide microcomputer. The emergency status was necessary because of disaster recovery and procurement proposals.

Contact: Tina J. Miles, 510 South Congress Avenue #216, Austin, Texas 78711, (512) 463-5530

Filed: January 14, 1987, 3:34 p.m.
TRD-8700424

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State Bar of Texas

Thursday, January 22, 1987, 9:00 a.m. The Executive Committee of the State Bar of Texas will meet in the Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the committee will meet to hear reports of the president and various considerations, executive director, general counsel, FYLA president, president-elect, immediate past president, immediate past chairman of the board, and supreme court liaison. The committee also will hear reports from the committee on public understanding of the legal system and lawyers, Red Duke project, legislative update, report of associate executive director, and the convention budget report.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451

Filed: January 14, 1987, 3:24 p.m.
TRD-8700423

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State Board of Barber Examiners

Tuesday, February 3, 1987, 8 a.m. The State Board of Barber Examiners will meet in Room C-275, 1300 East Anderson Lane, Austin. According to the agenda, the board will consider the minutes of the previous meeting; sign teacher and school certificates; interview out-of-state applicants; propose amendments to 22 TAC §51.27 concerning deduction or increase of student and student teacher hours in barber school, and letters and reports to the board by executive director. The board also will meet in executive session.

Contact: Jo King McCrorey, 1300 East Anderson Lane, C-275, Austin, Texas 78752, (512) 835-2040

Filed: January 15, 1987, 9:01 a.m.
TRD-8700437

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Texas School for the Blind

Friday, January 23, 1987, 9 a.m. The Local Board of Trustees of the Texas School for the Blind will meet at 1100 West 45th Street, Austin. According to the agenda, the board will consider business requiring local board approval requesting to approve amend policies, confirm consultant contracts, and approve NAC summary report, and for informational purposes consider the board training presentation, update facility planning, transition planning, summer school planning update, parent outreach update, presentation of cub scout recognition, presentation of IAG videotape, May meeting date; hear reports of special committees, audiences with individuals or committees wishing to make a report or request, and hear report or discussions from board members.

Contact: Ann Kennedy, 1100 West 45th Street, Austin, Texas 78756 3494, (512) 454-8631, ext. 133

Filed: January 13, 1987, 11:16 a.m.
TRD 8700373

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Texas State Board of Examiners of Professional Counselors

Saturday, January 24, 1987, 9 a.m. The Texas State Board of Examiners of Professional Counselors will meet at the Austin Hilton Inn, IH-35 and U.S. 290 East at Highland Mall, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the board will approve minutes of the Oc-

tober 26, 1986, meeting; hear reports from Examination, Continuing Education, Professional Relations, Complaint, and Budget Committees; consider cancellation of licenses due to nonrenewals, board newsletter, licensure applications and procedures including reviews of disapproved files (applicants with disapproved files may appear for review of their applications), and other matters relating to the licensure and regulation of professional counselors not involving board action.

Contact: Daniel I. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: January 13, 1987, 2:28 p.m.
TRD-8700379

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Texas State Board of Dental Examiners

Thursday-Saturday, January 22-24, 1987, 8 a.m. daily. The Texas State Board of Dental Examiners submitted a revised agenda for a meeting to be held at the Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas. The addition concerns the TDA peer assistance program, the request of Dr. Lazaro Chavarria for exception to board rules, discussions of future meetings and accommodations, amendment to §107.38 (relating to Reporters and Transcripts), and advertising. The board also will meet in executive session to discuss attorney representation in litigation suit.

Contact: William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021

Filed: January 14, 1987, 9:24 a.m.
TRD-8700404

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Texas Education Agency

Friday-Saturday, January 30-31, 1987, 8:30 a.m. daily. The Texas Education Agency will meet in the Brazos Room, Executor Motor Inn, 925 East Anderson Lane, Austin. According to the agenda, the Education Consolidation and Improvement Act Chapter Two Advisory Committee will review the formula to be used to flow the 80 percent portion of Chapter Two funds to local school districts, review the status of 1985-1986 projects continued into 1986-1987, review the recommendations of Texas Education Agency staff regarding enrichment projects for the 1987-1988 school year, and hear comments which the committee wishes to be made to the State Board of Education concerning the evaluation findings for the 1985-1986 school year.

Contact: Joe Cogbill, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269

Filed: January 13, 1987, 2:55 p.m.
TRD-8700383

Texas State Board of Registration for Professional Engineers

Wednesday and Thursday, January 28 and 29, 1987, 8:30 a.m. daily. The Texas State Board of Registration for Professional Engineers will meet in the boardroom, 1917 IH 35 South, Austin. According to the agenda summary, the board will receive reports from board members and staff; interview applicants, take action on applications for registration; consider reading of communications, and any other business which comes before the board.

Contact: Kenneth J. Bartosh, 1917 IH 35 South, Austin, Texas 78741, (512) 440-7723.

Filed: January 14, 1987, 1:46 p.m.
TRD-8700415

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Commission on Fire Protection Personnel Standards and Education

Wednesday, January 21, 1987, 1:30 p.m. The board of the Commission on Fire Protection Personnel Standards and Education will meet in the conference room, 510 South Congress Avenue, Austin. According to the agenda summary, the commission will approve or correct minutes from the October, 1986, meeting, hear reports from the Fire Suppression, Recruitment Selection, Higher Education and Arson Investigation Committees; hear the executive reports on proposed budget for fiscal years 1988 and 1989, consider fee collection problems, fire instruction problems and legislative items; and hear public comments and acknowledge or respond to commission correspondence.

Contact: Ray E. Goad, 510 South Congress Avenue, Suite 406, Austin, Texas 78704, (512) 474-8066

Filed: January 13, 1987, 4:12 p.m.
TRD-8700392

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Office of the Firemen's Pension Commission

Wednesday, January 28, 1987, 9:30 a.m. The Administrative Division of the Office of the Firemen's Pension Commission will meet in Suite 235, 3910 IH 35 South, Austin. According to the agenda, the board of trustees for the Senate Bill 411 Pension System as prescribed by Texas Civil Statutes, Article 6243e-3, to discuss the pension plan.

Contact: Ed S. Kirkham, 3910 IH-35 South, Suite 235, Austin, Texas 78704, (512) 462-0222

Filed: January 14, 1987, 3:47 p.m.
TRD-8700426

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Texas Department of Health

Friday, January 23, 1987, 9 a.m. The Municipal Solid Waste Management and Resource Recovery Advisory Council of the Texas Department of Health will meet in the Robertson Room, La Mansion Hotel, 6505 IH 35 North, Austin. According to the agenda summary, the council will approve minutes of the November 21, 1986, meeting; hear the division director's report to the council regarding status of fee system resource recovery update (Texas and United States), consider status of Federal Subtitle D Regulations Advisory Council vacancies; 70th Legislature, container deposit legislation; summary of (municipal) solid waste bills already filed; Sierra Club proposals for solid waste management; hear report of Advisory Council Legislative Committee; national recycling coalition (recycling Congress for 1987), and plan a resource recovery conference.

Contact: I. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Filed: January 14, 1987,
TRD-8700431

Friday, January 23, 1987, 10 a.m. The Texas Emergency Medical Service Advisory Council will meet in Room 1-610, 1100 West 49th Street, Austin. According to the agenda summary, the council will hear the Nominating Committee report, consider election of officers, regional reorganization, hear emergency medical services legislative report, bureau chief report, consider rule activity, ambulance equipment list on a Delphi process, a video presentation entitled *Saving Lives - EMS in Texas*, future meeting dates, and messages of communication to Texas Emergency Medical Services Advisory Council.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2601.

Filed: January 14, 1987, 4:13 p.m.
TRD 8700432

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Texas Historical Commission

Thursday, January 22, 1987, 2 p.m. The Executive Committee of the Texas Historical Commission will meet in the conference room, downstairs, El Rose Building, 108 West 16th Street, Austin. According to the agenda, the committee will present Texas awards for historic preservation, elect officers, consider Texas Indian Commission proposal, and HHC Committees and meetings. The committee also will meet in executive session if necessary.

Contact: Curtis Tunnell, 1511 Colorado Street, Austin, Texas 78701, (512) 463-6100.

Filed: January 13, 1987, 3:51 p.m.
TRD 8700388

Thursday, January 22, 1987, 5 p.m. The Federal Programs Committee of the Texas Historical Commission will meet in the First Floor Conference Room, El Rose Apartments, 103 West 16th Street, Austin. According to the agenda, the committee will present historic preservation awards, consider Amistad stabilization efforts, an update on major projects and quarterly report, hear quarterly report on activities, consider request for rescission of federal historic preservation fund monies, consider upcoming State Board of Review meeting, and present first annual John and Joyce Karr award.

Contact: Marlen Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: January 13, 1987, 3:51 p.m.
TRD 8700389

Friday, January 23, 1987, 8 a.m. The Main Street Committee of the Texas Historical Commission will meet at 1510 Congress Avenue, Austin. According to the agenda, the committee will consider certification of self-initiated main street cities, certification of urban main street cities, and hear a progress report on main street cities and program.

Contact: Amice Read, P.O. Box 12276, Austin, Texas 78711, (512) 463-6092.

Filed: January 13, 1987, 3:51 p.m.
TRD 8700390

Friday, January 23, 1987, 9:30 a.m. The Texas Historical Commission will meet in Room 118, Stephen F. Austin Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will hear reports from the chairman, Sesquicentennial Committee, Federal Programs Committee, Archeology Committee, Publications Committee, Research and Markers Committee, Field and Museum Service Committee, Architecture Committee, and Main Street Committee.

Contact: Curtis Tunnell, 1511 Colorado Street, Austin, Texas 78701, (512) 463-6100.

Filed: January 13, 1987, 3:50 p.m.
TRD-8700391

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State Board of Insurance

Tuesday, January 20, 1987, 10:00 a.m. The State Board of Insurance made an emergency revision to the agenda for a meeting to be held in Room 414, State Insurance Building, 1110 San Jacinto, Austin. The revision concerns the adoption of 28 TAC 1.405, concerning assessment of maintenance taxes for 1987. The emergency status is necessary in order to provide for notification of rate to enable taxpayers to make payment before due date.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 13, 1987, 2:40 p.m.
TRD-8700381

Wednesday, January 28, 1987, 9:00 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9457—application for original charter of Planet Indemnity Company, Houston.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: January 14, 1987, 3:18 p.m.
TRD-8700422

Monday, February 2, 1987, 9:00 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 an appeal by Coastal Transport Company, Inc., of a calculation of an experience modifier applicable to workers' compensation premium.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 14, 1987, 1:46 p.m.
TRD 8700416

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Texas Department of Labor and Standards

Friday, January 30, 1987, 11 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards (TDL S) will meet in the TDL S Regional Office, 3014 Sandage, Fort Worth. According to the agenda, the division will consider license and registration, and suspensions and alleged violations of various rules and regulations of the department.

Contact: Craig Sandage, P.O. Box 12157, Austin, Texas 78711, (512) 463-3129.

Filed: January 14, 1987, 9:50 a.m.
TRD 8700402

Friday, February 6, 1987, 9 a.m. The Labor, Licensing, and Enforcement Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider license and registration, and suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3129.

Filed: January 14, 1987, 9:50 a.m.
TRD-8700403

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General Land Office

Thursday, January 22, 1987, 3:30 p.m. The Veterans Land Board of the General Land Office will meet in Room 831, Stephen F. Austin Building, Austin. According to the agenda summary, the board will meet to discuss approval of the December 16, 1986, minutes of the board, and review bids for group credit life insurance for the veterans' programs; consider the application for Maxine B. Wilcox, Veterans Land Board Account 121480; consider requests to participate in the Veterans Land Program; Clifford I. Warwick, David C. Burton and Larry Turner; and consider forfeiture action on delinquent accounts.

Contact: Jack Giberson, Room 836-A, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5254.
TRD 8700421

Thursday, January 22, 1987, 3:30 p.m. The Veterans Land Board of the General Land Office will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of the December 16, 1986, meeting; review bids for group credit life insurance for the veterans' programs; consider requests to participate in the Veterans Land Program by Clifford I. Warwick, David C. Burton, and Larry Turner; and consider forfeiture action on delinquent accounts.

Contact: Jack Giberson, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5254.

Filed: January 14, 1987, 4:14 p.m.
TRD-8700430

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Board of Law Examiners

Friday-Sunday, January 23-25, 1987, 8 a.m. The Board of Law Examiners will meet Friday and Saturday in the Texas Law Center, 1414 Colorado, Sunday at the Capital Marriott, 11th Street at IH 35, Austin. According to the agenda, the examiners will meet to discuss the minutes of the November 1986, meeting; consider the current status of the fiscal year 1987 budget; discuss the February 1987 bar exam and prepare the questions; the declaration filing deadline policy; licensing of foreign legal consultants; the release of certain exam questions; consider questions of eligibility and special requests; and hearings on moral character and fitness.

Contact: Wayne F. Denton, Suite 116, 510 South Congress Avenue, Austin, Texas 78704, (512) 463-1621.
TRD-8700420

Texas State Board of Pharmacy

Wednesday, January 21, 1987, 10 a.m. The Texas State Board of Pharmacy submitted a revised agenda of a meeting to be held in the Embassy Suites, 5901 IH 35 North, Austin. The addition concerns proposed amendment §291.7, regarding change of pharmacist employment.

Contact: Fred S. Brinkley, 8505 Cross Park Drive #110, Austin, Texas 78754.

Filed: January 13, 1987, 4:02 p.m.
TRD 8700393

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Public Utility Commission of Texas

Thursday, January 15, 1987, 10 a.m. The Hearings Division of the Public Utility Commission made an emergency addition to the agenda of a meeting held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will meet in an emergency executive session to consider pending litigation of Central Power and Light Company vs. Lubow, McKay, Stevens, and Lewis and the Public Utility Commission of Texas. The emergency status was necessary because of the need to consider action on the pending proceeding.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 14, 1987, 4:11 p.m.
TRD 8700429

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, Days, times, and agendas follow.

Friday, January 23, 1987, 9 a.m. A prehearing conference in Docket 7145—application of Kerrville Telephone Company to detariff paging and mobile telephone service and customer premises equipment.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 13, 1987, 2:30 p.m.
TRD 8700377

Wednesday, March 11, 1987, 10 a.m. A hearing on the merits in Docket 7248—application of Hill Country Telephone Cooperative, Inc. for tariff revisions to offer private pay telephone service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 14, 1987, 1:46 p.m.
TRD-8700417

Monday, March 23, 1987, 10 a.m. A hearing on the merits in Docket 7279—application of Tex-Ed Electric Cooperative of Texas, Inc., for authority to change rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 13, 1987, 2:30 p.m.
TRD-8700378

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State Seed and Plant Board

Monday, January 26, 1987, 9:30 a.m. The State Seed and Plant Board of the Texas Department of Agriculture will meet in the Preston Hollow Room, Dallas Hilton Inn, Dallas. According to the agenda summary, the board will consider the election of State Seed and Plant Board officers; review applications for license as certified seed growers; acknowledge name changes of certified seed growers; acknowledge Sorghum Review Committee; approve inspector and agronomist list for 1987; request certification eligibility of new varieties; discuss labeling of variety not stated for cotton; and discuss the Southern meeting to be held in May, 1987.

Contact: Kenneth Boatwright, P.O. Box 12847, Austin, Texas 78713, (512) 463-7614.

Filed: January 14, 1987, 1:47 p.m.
TRD 8700418

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University of Texas System

Saturday and Sunday, January 17 and 18, 1987, 1:30 p.m. and 8:30 a.m., respectively. The Board of Regents of the University of Texas System met in the Stones Crossing Room, Four Seasons Hotel, 99 San Jacinto Boulevard, Austin. According to the agenda, the board met in executive session to consider personnel matters related to the possible election and employment of a chief administrative officer for the University of Texas Medical Branch at Galveston pursuant to Texas Civil Statutes, Article 6252.17, §2(g). This meeting was necessary to interview prospective candidates and no formal action on an appointment was anticipated.

Contact: Arthur H. Dills, P.O. Box N, Austin, Texas 78713-7328, (512) 499-4402.

Filed: January 13, 1987, 2:52 p.m.
TRD 8700382

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Board of Veterinary Medical Examiners

Thursday-Saturday, January 29-31, 1987, 8:30 a.m. daily. The Board of Veterinary Medical Examiners will meet in the Hyatt Regency, 815 Main Street, Fort Worth. According to the agenda summary, the board will conduct disciplinary hearings; adopt revised rules of professional conduct; repeal a rule of professional conduct; review ev-

amination results, and conduct other board business. The board also will meet in executive session to consider pending litigation on Saturday, January 31, 1987.

Contact: Donald B. Wilson, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183

Filed: January 14, 1987, 3:46 p.m.
TRD-8700427

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Texas Water Commission

Wednesday, February 11, 1987, 10 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 the petition requesting additional powers for Bastrop County Water Control and Improvement District No. 3.

Contact: Mary Ann Helner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898

Filed: January 14, 1987, 3:55 p.m.
TRD-8700428

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Regional Agencies

Meetings Filed January 13

The Central Texas Council of Governments, Central Texas Private Industry Council and the Executive Committee, will meet at 302 East Central, Belton, on January 22, 1987, at 10 a.m. and noon, respectively. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513, (817) 939-3771.

The Colorado River Municipal Water District, Board of Directors, met at 400 East 24th Street, Big Springs, on January 14, 1987, at 10 a.m. Information may be obtained from O. H. Iyie, 400 East 24th Street, Big Springs, Texas 79721, (915) 267-6341.

The Heart of Texas Council of Governments, Executive Committee, will meet in the conference room, 320 Franklin, Waco, on January 22, 1987, at 10 a.m. Information may be obtained from Mary McDow, 320 Franklin Avenue, Waco, Texas 76701-2297, (817) 756-6631.

The High Plains Underground Water Conservation District #1, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on January 22, 1987, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Lee County Appraisal District, Appraisal Review Board, will meet at 218 East Richmond Street, Giddings, on January 22, 1987, at 9 a.m. Information may be obtained

from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Mason County Appraisal District, will meet at 206 Ft. McKavitt Street, Mason, on January 21, 1987, at 5:15 p.m. Information may be obtained from Ann Stapp, P.O. Box 1119, Mason, Texas 76836, (915) 347-5989.

The Mokon Transportation Corporation, Inc., Board of Directors, met at 7901 North IH 35, Austin, on January 16, 1987, at 1:30 p.m. Information may be obtained from Rafael Quintanilla, 301 Congress Avenue, Suite 2100, Austin, Texas 78701, (512) 477-6774.

TRD-8700372

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Meetings Filed January 14

The Austin-Travis County MHMR Center, Operation and Planning Committee, met in Suite 501, 611 South Congress Avenue, Austin, on January 16, 1987, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

The Brazos River Authority, Board of Directors, met at 4400 Cobbs Drive, Waco, on January 19, 1987, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555.

The Central Texas Council of Governments, Transportation Planning Committee, will meet at 302 East Central, Belton, on January 23, 1987, at 10 a.m. Information may be obtained from Gerald Bunker, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Harris County Appraisal District, Board of Directors, will meet on the Eighth Floor, 2800 North Loop West, Houston, on January 21, 1987, at 1:30 p.m. Information may be obtained from Margie Ellhard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Henderson County Appraisal District, Board of Directors, met at 101 East Corsicana, Athens, on January 19, 1987, at 7:30 p.m. Information may be obtained from Helen Marchbanks, P.O. Box 430, Athens, Texas 75751, (214) 675-9296.

The Jack County Appraisal District, Board of Directors, will meet at the Los Creek Office Building, 216 D South Main, Jacksboro, on January 20, 1987, at 7 p.m. Information may be obtained from Doris G. Ray, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Kendall County Appraisal District, Board of Directors and Board of Review, will meet 207 East San Antonio Street, Boerne, on January 21, 1987, at 7 p.m., and

January 27, 1987, at 8:30 a.m., respectively. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Limestone County Appraisal District, Board of Directors, will meet in the Courthouse, Appraisal District Office, Groesbeck, on January 21, 1987, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The North Central Texas Council of Governments for North Central Texas Job Training, Consortium Private Industry Council, met in Centerpoint Two, 616 Six Flags Drive, Arlington, on January 15, 1987, at 10 a.m. Information may be obtained from Mike Gilmore, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.
TRD-8700396

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Meetings Filed January 15

The Dallas Central Appraisal District, Appraisal Review Board, will meet in Suite 500, 1420 West Mockingbird Lane, Dallas, on January 23, 1987, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Hale County Appraisal District, Board of Directors, will meet at 302 West Eighth Street, Plainview, on January 22, 1987, at 7 p.m. Information may be obtained from Linda Jaynes, 302 West Eighth Street, Plainview, Texas 79072, (806) 293-4226.

The Mills County Appraisal District, will meet in the Mills County Courthouse, Goldthwaite, on January 22, 1987, at 6:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

The North Central Texas Council of Governments, Executive Board, will meet on the second floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on January 22, 1987, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The Palo Pinto Appraisal District, Board of Directors, will meet in the Palo Pinto County Courthouse, Palo Pinto, on January 21, 1987, at 3 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 695-3651, ext. 223.
TRD-8700436

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In Addition

The *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 Community Affairs

Notice of Consultant Contract Award

This notice is filed pursuant to Texas Civil Statutes, Article 6252 11c.

Contractor. The Texas Department of Community Affairs (TDCA) announces that the Lamar University has been awarded a contract under the provisions of Texas Civil Statutes, Article 6252 11c, for the period of January 12, 1987, through October 31, 1987. The contract is for the purpose of providing curriculum development and training service delivery area (SDA) staff in courses related to improving specific technical skills applicable to program functions under the Job Training Partnership Act (JTPA) program in the State of Texas. The consultant proposal request was published in the May 27, 1986, issue of the *Texas Register* (11 TexReg 2486).

Description of Services. The services to be provided by Lamar University shall include, but not be limited to, the following:

- (1) development of curriculum for training SDA directors and planners in designing and conducting employer-based and household surveys which will enable local SDAs to determine:
 - (a) structure of local labor markets,
 - (b) number and characteristics of existing local job vacancies,
 - (c) hiring, training, and promotional practices of local firms, and
 - (d) employer attitudes toward employment and training programs,
- (2) presentation of workshops, and
- (3) production and delivery of final products to include a technical assistance guide on primary survey activities.

Business Address. The business address of Lamar University is P. O. Box 10003, Beaumont, Texas 77710.

Contract Amount. The total cost of services to be performed under the contract with Lamar University is presently estimated to be \$35,000.

Project Reports. Reports to be generated under this contract shall be submitted to TDCA upon completion.

Issued in Austin, Texas, on January 12, 1987

TRD-8700313 Douglas C. Brown
General Counsel
Texas Department of Community
Affairs

Filed, January 12, 1987

For further information, please call (512) 834-6060.

Texas Department of Human Services Editors Note

Two new sections adopted by the Texas Department of Human Services were erroneously assigned the same section number, §47 3905. The *Register* has administratively corrected this error by renumbering the second new section. Therefore, §47 3905 is entitled Vendor Hold, and was adopted in the May 30, 1986, issue of the *Texas Register* (11 TexReg 2518). The other new section, which was adopted as §47 3905 in the January 9, 1987, issue of the *Texas Register* (12 TexReg 71) is administratively changed to §47 3907 and is entitled Limitations on Provider Charges to Patients.



Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 5-9, 1987.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request, and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P. O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Normco Leasing, Inc., Class II non hazardous, commercial storage and transfer facility; 1525 North 75th Street, on a five-acre tract of land, in Harris County; Houston; SW-39065, new permit



Charles M. Lamascus, Jr., confined poultry/caged laying operation; seven miles north-northeast of Schulenburg in Fayette County, west of and adjacent to County Road 443, north at FM Road 956; Schulenburg; 02850; new permit

Continental Carbon Company, Sunray Plant, carbon black production operation, approximately two miles north of an oil refinery and approximately 8.5 miles northeast of the City of Dumas, Moore County; Sunray, 02882, new permit

Kerr McGee Chemical Company, storage and disposal facility for management of Class I hazardous waste; at 155 Buchanan Road on a 500-acre tract of land in Texarkana, Bowie County, Texarkana, HW50076; new permit

Alpha Omega Recycling, Inc., storage and processing facility for industrial hazardous wastes, on a .93-acre tract of land at 601 South Whatley Road, 1.5 miles east of White Oak, Gregg County, Longview, HW50203, new permit

Colville and Wilson, Inc., Washing Station, potato rinsing and packaging facility, on the south side of FM Road 1587 and east of the intersection of FM Road 1587 and the Fort Worth and Denver Railroad tracks in the City of Munday, Knox County, Munday, 02894, new permit

Issued in Austin, Texas, on January 9, 1987

TRD-8700337 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed January 12, 1987
For further information, please call (512) 463-7898

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Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th

day after the date on which the decision is adopted, the following information is submitted

An enforcement order was issued to the City of Prairie View, on January 13, 1987, assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ramon Dasch, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069

Issued in Austin, Texas, on January 13, 1987

TRD-8700394 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed January 13, 1987
For further information, please call (512) 463-7898

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Public Hearing

A representative of the Texas Water Commission will conduct a public hearing on Thursday, February 19, 1987, 10 a.m. - 2 p.m., City Council Chambers, City Hall, 1600 Avenue M, Hondo

This hearing is held pursuant to the Texas Water Code, §26.046, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution

Persons who have questions concerning the hearing or who wish to submit written comments prior to the hearing should contact Tom Bohl, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069

Issued in Austin, Texas, on January 12, 1987

TRD-8700380 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Filed January 13, 1987
For further information, please call (512) 463-8087

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