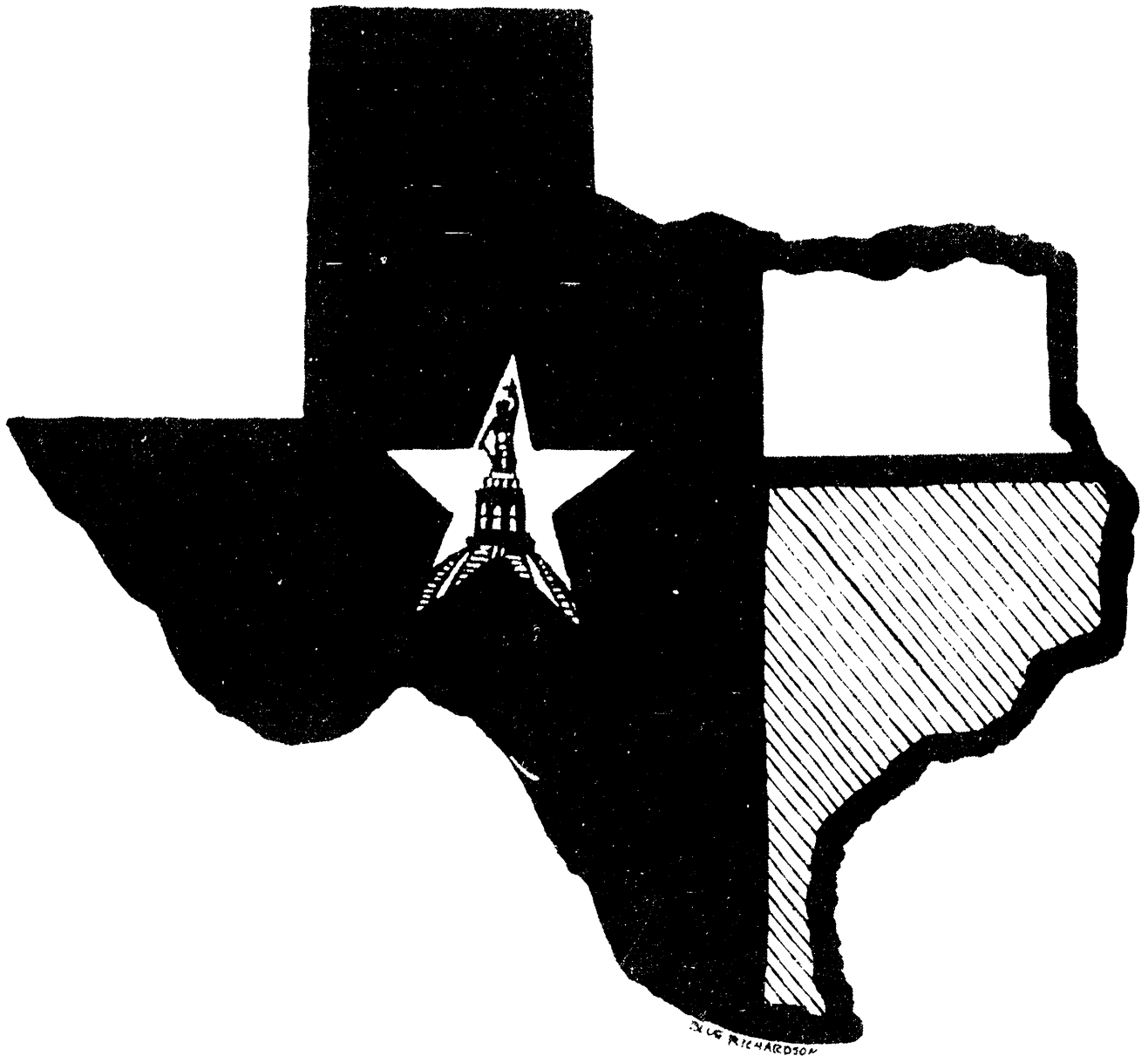


● Texas Register

Volume 12, Number 87, November 20, 1987

Pages 4305-4387



Highlights

The **Office of the Attorney General** adopts new sections on an emergency basis concerning general requirements for nonprofit corporation bonds. Effective date - November 30, 1987 **page 4315**

The **Railroad Commission of Texas** proposes an amendment concerning gas to be produced and purchased ratably in the conservation rules and

regulations. Earliest possible date of adoption - December 21, 1988 **page 4325**

The **Texas Water Development Board** proposes new sections concerning the creation and administration of the state water pollution control revolving fund. Earliest possible date of adoption - December 21, 1987 **page 4326**

**Office of
the Secretary
of State**

Texas Register

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

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 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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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 November 9

To be a member of the **Texas Commission on Alcohol and Drug Abuse** for a term to expire June 8, 1993:

Jerry Deere, 1014 North Gulf Boulevard, Freeport, Texas 77541. Mr. Deere will be replacing Jim Clipson, Jr. of Eagle Lake, whose term expired.

To be a member of the **Governor's Committee for Disabled Persons** for a term to expire July 8, 1989, and at the pleasure of the

governor:

Annabelle A. Farrell, P. O. Box 381042, Duncanville, Texas 75138. Mrs. Farrell will be replacing Omar L. Carreon, Sr. of Weslaco, whose term expired.

To be a member of the **Texas Diabetes Council** for a term to expire February 1, 1989:

Judy M. Hunt, 6832 Blackwood Drive, Dallas, Texas 75231. Mrs. Hunt is being appointed to a new consumer member position.

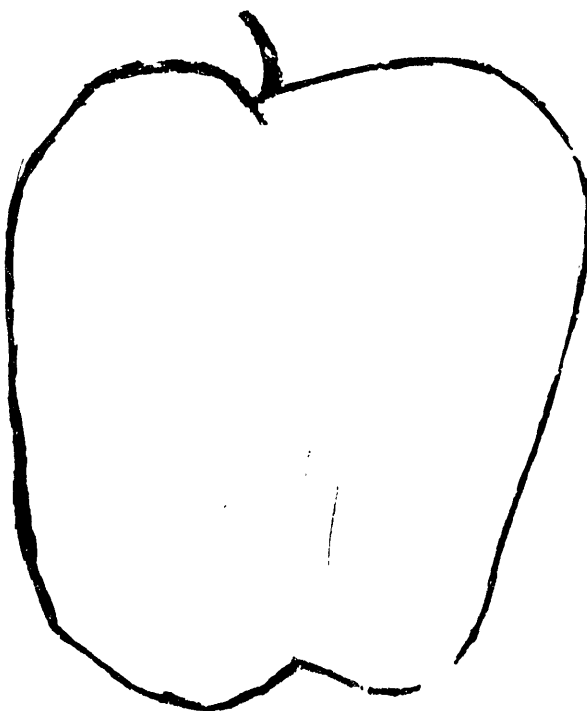
To be a member of the **Texas Commission on Alcohol and Drug Abuse** for a term to expire June 8, 1993:

Randall L. Schmidt, 203 Fort Worth Club Building, Fort Worth, Texas 76102. Mr. Schmidt will be replacing Joshua W. Allen, Sr. of Beaumont, whose term expired.

Issued in Austin, Texas, on November 10, 1987.

TRD-8710089

William P. Clements, Jr.
Governor of Texas



Name: Jennifer Klein
Grade: 3
School: Maedgen Elementary, Lubbock

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*.

Requests for Opinion

RQ-1286. Request from Gibson D. (Gib) Lewis, Speaker of the House, Texas House of Representatives, Austin, concerning whether the Tax Code, §26.08, which permits a tax rate rollback election to limit school taxes, is unconstitutional.
TRD-8710086



RQ-1287. Request from James W. Deatherage, Attorney for Irving ISD, Irving, concerning whether information relating to the recovery of attorneys fees in pending litigation falls within the Texas Civil Statutes, Article 6252-17a, §3(a)(3).
TRD-8710087



RQ-1288. Request from J. W. Gary, Gary, Thomasson, Hall and Marks, Attorneys at Law, Corpus Christi, concerning whether oral or written information delivered to a governmental body during a properly called and conducted executive session under the Open Meetings Act, Texas Civil Statutes, Article 6252-17, §3(g), is confidential under the Open Records Act, Texas Civil Statutes, Article, 6252-17a, §3(a)(1).
TRD-8710088



Opinions

JM-814 (RQ-1114). Request from Patrick O. Hardy, Criminal District Attorney, Woodville, concerning whether an individual may simultaneously serve as county judge and city attorney of a city within that county.

Summary of Opinion. One person may not simultaneously serve as county judge of Tyler County and as city attorney of a general law city located in Tyler County. Statutory and constitutional limits on the practice of law by a county judge, together with the absence of county courts at law in Tyler County, render it impossible for one person to perform the duties of both positions.

TRD-8710074



JM-814A (RQ-1114). Request from Patrick O. Hardy, Criminal District Attorney, Woodville, concerning clarification of JM-814.

Summary of Opinion. The conclusion of the opinion, which is stated in the last two sentences and the summary of the opinion, depends upon the assumption that a large number of cases was appealed from the Woodville municipal court to the Tyler county court. Attorney general opinions cannot resolve questions of fact, but can only resolve legal questions. We must rely on presumed facts where a factual setting is necessary to answer a legal question. If appeals from the Woodville municipal court constitute only a small aprt of the county judge's caseload, then the conclusion would not be applicable to the individual in this case, and the city attorney of Woodville would not be barred by the cited provisions from serving as the county judge of Tyler County.

TRD-8710075



JM-815 (RQ-1155). Request from John I. Barnhill, Crosby County Attorney, Crosbyton, concerning the obligation of a county under Texas Civil Statutes, Article 2351(11), to provide for the relief of paupers.

Summary of Opinion. Article 2351(11), which provides that commissioners courts shall provide for the support of paupers, does not by itself create property rights cognizable under the due process clause of the 14th Amendment to the United States Constitution.

TRD-8710076



JM-816 (RQ-1012). Request from Brad Wright, Chairman, Public Health Committee, Texas House of Representatives, Austin, concerning whether a hospital district is required to make its facilities available for non-therapeutic abortions.

Summary of Opinion. Absent specific legislation, the board of managers of the City of Amarillo Hospital District may generally determine which medical services it will provide. The board may not adopt a policy to refuse to make its public hospital available

for the performance of nontherapeutic first and second trimester abortions for paying patients. Neither state nor federal law requires the City of Amarillo Hospital District to fund nontherapeutic abortions

TRD-8710071



JM-817 (RQ-1093). Request from Robert J. Proven, General Counsel, Stephen F. Austin State University, Nacogdoches, concerning whether a state university may contract with a corporation in which the spouse of a regent owns a substantial interest.

Summary of Opinion. Stephen F. Austin State University is barred by common law conflict of interest provisions from purchasing the products of a firm in which a regent has an interest, even though the board of regents has delegated purchasing decisions to subordinate officers and employees.

TRD-8710073



JM-818 (RQ-1236). Request from Dale Hanna, Johnson County Attorney, Cleburne, concerning whether a commissioners court is authorized or required to fund an independent audit of the county clerk's office under certain circumstances.

Summary of Opinion. Johnson County is not liable to pay for an independent audit of the county clerk of that county which was done at the request of the county clerk. The commissioners court of Johnson County may pay for the audit if it chooses to do so by ratifying the hiring of the independent audit or in accordance with the requirements of Texas Civil Statutes, Article 1641 (now codified as the Local Government Code, §115.031).

TRD-8710085



JM-819 (RQ-1002). Request from J. Collier Adams, Jr., Cochran County Attorney, Morton, and Gale Warren, Erath County Attorney, Stephenville, concerning reconsideration of Attorney General Opinion JM-422: Whether the same person may serve as justice of the peace and part time appointed municipal judge of a city within the same county precinct.

Summary of Opinion. The doctrine of incompatibility does not prevent a justice of the peace from holding at the same time the office of part located within the precinct. The discussion of Question 2 of Attorney General Opinion JM-422 (1986) and its finding of incompatibility under these circumstances is overruled. The overruling of Attorney General Opinion 0-2055 (1940) is withdrawn.

TRD-8710070



JM-820 (RQ-1228). Request from John B. Holmes, Jr., Harris County District Attorney, Houston, concerning whether a conviction for the offense of issuing a bad check will bar a prosecution for theft where both offenses arise out of the same transaction.

Summary of Opinion. The trial of an accused for the offense of issuance of a bad check under the Penal Code, §32.41, will not serve as a bar under the double jeopardy provisions of the state and federal constitutions to a prosecution for theft (under the Penal Code, §31.03 or §31.04) growing out of the

same transaction.
TRD-8710084



Open Records Decisions

ORD-481 (RQ-1187). Request from Hunter T. Hillin, Legal Counsel, DFW Airport, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, allows Dallas/Fort Worth International Airport Board to deny request submitted by unsuccessful applicant for employment for access to information concerning his application.

Summary of Decision. Constitutional and common law privacy afford no grounds for denying a person's request for information concerning him. In this instance, the Act authorizes the withholding of portions of Exhibits "C", "G", and "I". Exhibits "E", "F", and "H" may be withheld in their entirety.

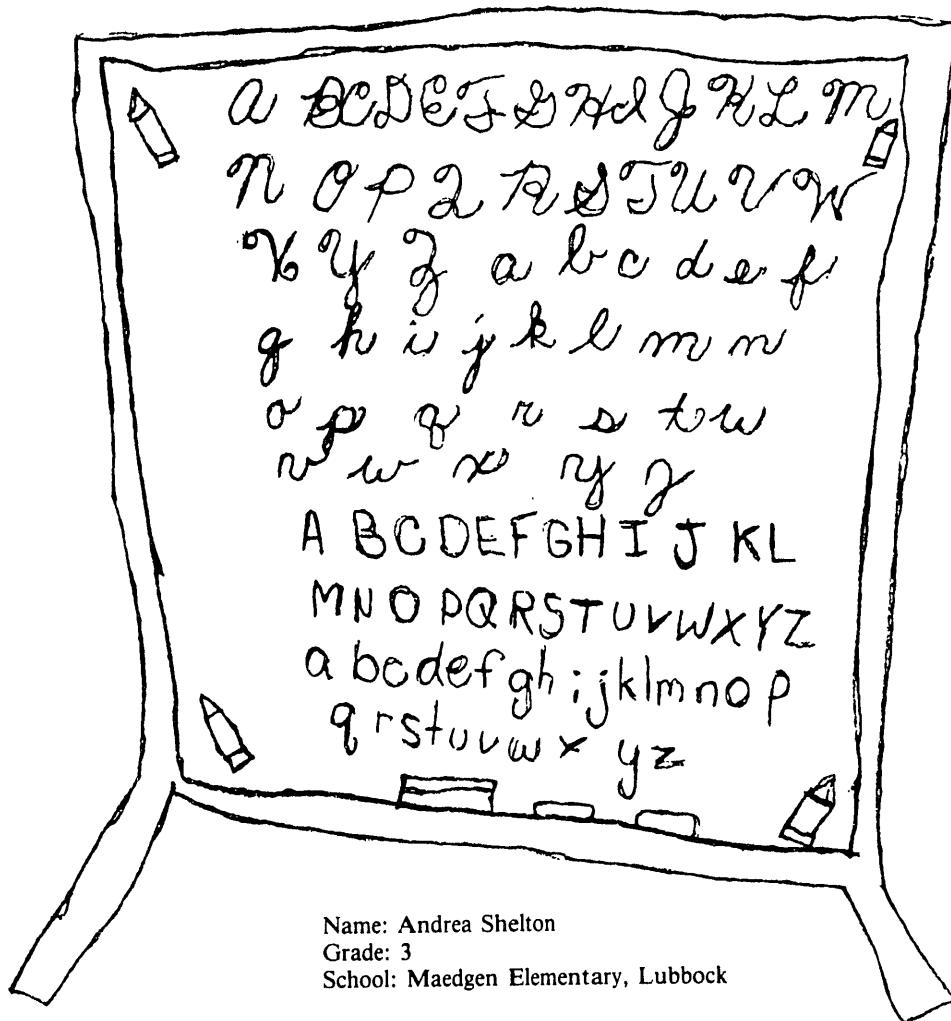
TRD-8710078



ORD-482 (RQ-1186). Request from Nanette G. Williams, Assistant City Attorney, El Paso, concerning whether information within the Open Records Act, Article 6252-17a, §3(a)(6), becomes public after adoption of the proposed legislation and related questions.

Summary of Decision. The Open Records Act, §3(a)(6), protects working papers involved in the preparation of legislation even after the legislation is enacted, except to the extent that application of principles stated in Open Records Decision Number 137 (1976) requires the conclusion that this protection has been waived. Texas Civil Statutes, Article 4495b, §5.08, protects certain medical information in the personnel files at issue here. Section 3(a)(11) does not permit performance evaluation reports to be withheld if their disclosure, with the identities of the evaluators deleted, would not enable the public to ascertain those identities. The city may not withhold the name of a complainant who filed a report with the fire department.

TRD-8710077



Name: Andrea Shelton
Grade: 3
School: Maedgen Elementary, Lubbock

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 1.

ADMINISTRATION

Part III. Office of the

Attorney General

Chapter 53. Municipal

Securities

Subchapter L. General

Requirements for NonProfit

Corporation Bonds

★1 TAC §§53.181-53.184

The Office of the Attorney General adopts on an emergency basis new §§53.181-53.184, concerning general requirements for nonprofit corporation bonds. The new sections are adopted on an emergency basis to conform with Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005) which prohibits the issuance of certain bonds after November 1, 1987, without approval by the Texas attorney general. The new sections prevent imminent peril of the state by avoiding disruption of the municipal bond industry pending implementation of Senate Bill 56.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a and Senate Bill 56, 70th Legislature, Second Called Session, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005), which provide the Office of the Attorney General with the authority to adopt rules necessary to carry out the purposes of Senate Bill 56 in implementing the review process for certain bonds.

§53.181. Form of Documents. All documents and certificates submitted are to be dated, fully executed originals, unless otherwise indicated in this chapter. Undated certificates shall be accompanied by authorization from the appropriate party to the attorney general to complete the date of such certificate upon approval of the bonds and to rely upon such information unless notified otherwise.

§53.182. Governing Law. Except as otherwise provided in this chapter, all documents to which the issuer is a party shall contain a provision to the effect that such document shall be governed by and construed in accordance with the laws of the State of Texas.

§53.183. Closings.

(a) Basic financing documents are to be submitted a minimum of 12 working days prior to closing. One of the 12 days is needed in order to transmit approved bonds to the Comptroller of Public Accounts for registration. Under extraordinary circumstances, a shorter review period will be considered, but only upon preclearance with the Public Finance Section. Certificates and other documentation should be submitted with, or as soon as possible after, the submission of the basic financing documents. It is highly recommended that closing not be scheduled prior to contacting the Public Finance Section.

(b) If documents cannot be executed in time to meet submittal requirements, it is acceptable to submit unexecuted documents in substantially final form. If any changes are made to the documents after they are first submitted, blacklined copies showing all changes must also be submitted. Any substantive changes may delay approval.

(c) The attorney general will send a representative to out-of-town closings if truly necessary and only if precleared with the Public Finance Section. As this is generally not a productive use of time for attorneys in the Public Finance Section, cooperation of all parties to the financing in order to avoid the necessity of such attendance is requested.

§53.184. General Submission Requirements. The following transcript items are to be submitted for all nonprofit corporation bonds:

(1) index of all documents comprising the bond transaction, with appropriate notation of those documents submitted to the attorney general;

(2) certification with respect to all bond proceedings held in compliance with Texas Civil Statutes, Article 6252-17, if applicable;

(3) certification that due notice of meetings has been given to the directors of the issuer, in accordance with by-laws;

(4) transcripts for refunding of bonds should contain additional items. Even though a current refunding under federal tax law allows redemption of the bonds within 90 days from the closing, for state law purposes the delay of redemption of the refunded bonds until after closing would be treated as an advance refunding and must

comply with applicable requirements, including:

(A) certifications with respect to consideration for refunding (also required for exchange refundings);

(B) escrow agreement or other document governing disposition and investment of bond proceeds pending redemption of the refunded bonds;

(C) verification of sufficiency of escrow, if applicable;

(D) copy of refunded bond resolution(s) or indenture(s); and

(E) authorization and instruction to call bonds for redemption;

(5) all other certificates or documents requested by the attorney general or otherwise relevant to the attorney general's approval of the financing.

Issued in Austin, Texas, on November 9, 1987.

TRD-8710066

Lou McCreary
Special Assistant
Attorney General
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Expiration date: March 9, 1987
For further information, please call
(512) 463-2087.



Subchapter M. Development Corporation Bonds

★1 TAC §§53.193-53.200

The Office of the Attorney General adopts on an emergency basis new §§53.193-53.200 concerning development corporation bonds. The new sections are adopted on an emergency basis to conform with Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005) which prohibits the issuance of certain bonds after November 1, 1987, without approval by the Texas attorney general. The new sections prevent imminent peril of the state by avoiding disruption of the municipal bond industry pending implementation of Senate Bill 56.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, and Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005), which provide the Office of the At-

torney General with the authority to adopt rules necessary to carry out the purposes of Senate Bill 56 in implementing the review process for certain bonds.

§53.193. *Generally.* In addition to the requirements of Subchapter L, this subchapter outlines the minimum transcript requirements prerequisite to approval of bonds issued pursuant to Texas Civil Statutes, Article 5190.6, as amended, Development Corporation Act of 1979, (the Act). Unless otherwise indicated below, terms not defined herein have the meanings assigned to them in the Act.

§53.194. *Basic Financing Documents.* The following shall constitute basic financing documents:

(1) loan agreement or other financing document between the corporation and the user;

(2) Trust indenture, bond resolution, or other document, which shall include the following provisions:

(A) terms of the sale of the bonds, i.e., negotiated, competitive or otherwise, identification of the purchaser, whether sold at par or discount;

(B) place and manner of payment for the bonds;

(C) title, aggregate amount, denomination, bond number(s), and purpose of the bonds;

(D) maturity schedule;

(E) payment date(s), interest rate(s), and/or method or formula for setting the interest rate(s);

(F) redemption provisions, if any;

(G) designation of registrar and provisions for registration and transfer of the bonds;

(H) form of bond, including on the face of all bonds a statement to the effect that neither the state of Texas, the unit, nor any political corporation, subdivision, or agency of the state of Texas shall be obligated to pay the bonds or the interest thereon and that neither the faith and credit nor the taxing power of the state of Texas, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or interest on the bonds;

(I) pledge and source of payment of the bonds and disposition of the bond proceeds;

(J) creation and designation of all funds relating to the disposition of bond proceeds and the payment and security for the bonds; and

(K) authorization to use official seal on the bonds and for the appropriate officers to sign the bonds and the form of such signature and seal (manual and/or facsimile);

(3) Credit agreement or other documents such as tender agent agreement or remarketing agreement which provide or facilitate credit enhancement for the bonds, if any. If the corporation is not a party to the

credit agreement or other credit enhancement agreements, such agreement need only be submitted in substantially final form, unexecuted;

(4) guarantee agreement or other documents guaranteeing the bonds, if any;

(5) official statement (or preliminary official statement if the official statement is not available) or other offering document and official notice of sale, if any;

(6) bond purchase agreement, if any. Such agreement need not be governed by Texas law, but the rights, duties, obligations and liabilities of the corporation must be controlled by Texas law;

(7) Deed of trust or other mortgage documents, if any, in substantially final form, unexecuted.

§53.195. *Documentation of Approving Governing Body.* The following shall constitute documentation of approving governing body.

(1) Resolution of the governing body approving the resolution of the corporation providing for the issuance of the bonds which resolution shall not be adopted more than 60 days prior to the delivery date of the bonds. Such resolution shall include:

(A) approval of issuance of the bonds;

(B) statement of the purpose and amount of the bonds; and

(C) identification of the user;

(2) either:

(A) undated general certificate of the governing body, executed by at least two officers of the governing body, which includes certifications and provisions with respect to:

(i) incumbency of the officers and directors of the governing body and corporation;

(ii) approval of all programs and expenditures of the corporation;

(iii) approval of the initial by-laws of the corporation and all amendments to the corporation's articles of incorporation, if any; and

(iv) no-litigation pending or threatened against the unit or governing body with respect to the issuance or approval of the bonds, the creation of the corporation or the title or authority of the officers and directors of the governing body or the corporation; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of no-litigation certifications; and

(C) undated no-litigation certificate.

§53.196. *Documentation of Corporation.* The following shall constitute documentation of corporation:

(1) either:

(A) undated general certificate of the corporation, executed by at least two officers of the corporation, which includes certifications and provisions (or confirmation

of any such certifications and provisions which are contained in the basic financing documents) with respect to:

(i) incumbency of the officers and directors;

(ii) due incorporation, valid existence, and good standing;

(iii) official seal;

(iv) any default with respect to any obligations of the corporation, based upon best knowledge and belief;

(v) no amendments to the corporation's articles of incorporation or by-laws since last submission of bonds or, in the alternative, copies of any amendments;

(vi) all documents, including counsel opinions, in substantially the form submitted to the department and approved by or on behalf of the corporation;

(vii) appointment of authorized representative, if any;

(viii) signature identifications;

(ix) no-litigation pending or threatened against the corporation with respect to the issuance of the bonds, or the title or authority of the officers and directors of the corporation;

(x) bond documents were properly executed by the corporation, which have not been amended or rescinded, and due performance thereof has been authorized by the corporation;

(xi) the terms and performance of the bond documents by the corporation which are not in conflict with the articles of incorporation or by-laws of the corporation or any other instrument or restriction to which the corporation is a party or subject to; and

(xii) incorporated as exhibits (or may be included as separate documents if certified as to accuracy);

(I) for the initial submission of bonds, a copy of the corporation's articles of incorporation as certified by the Secretary of State of Texas and by-laws;

(II) copy of certificate of continued existence from the Secretary of State of Texas, dated within 60 days of transcript submission; and

(III) copy of the department's approval; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate.

(2) resolution authorizing issuance of the bonds, including the following provisions:

(A) title of bonds;

(B) legal citation for authority to issue bonds;

(C) specific purpose for which the bonds are issued;

(D) identification of the user;

and

(E) total principal amount of bonds to be issued.

§53.197. *Documentation of User.* The following shall constitute documentation of user:

(1) either:

(A) undated general certificate of the user, including certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:

(i) due incorporation or creation, valid existence, and good standing;

(ii) incumbency of officers executing bond documents;

(iii) appointment of authorized representative, if any;

(iv) signature identifications;

(v) the bond documents properly executed by the user, which have not been amended or rescinded, and due performance thereof has been authorized by the user;

(vi) the terms and performance of the bond documents by the user which are not in conflict with the articles of incorporation, by-laws, partnership, or other agreement, of the user or any other instrument or restriction to which the user is a party or subject to;

(vii) receipt of all necessary permits and approvals of governmental bodies or agencies with respect to the issuance and sale of the bonds and that the user has received or expects to receive and has applied or shall apply with due diligence for all necessary permits and approvals with respect to the construction or operation of the project;

(viii) pursuant to the department's rules, no event has occurred since the date of the user's application to the department that would result in a material adverse change in the financial condition of the user or in the user's ability to perform its obligations under the bond transaction documents;

(ix) no default under any agreement to which the user is a party which would have a material adverse effect on the user, or certification that the corporation has been provided with a complete description of the facts and circumstances of such default;

(x) location of project facilities (whether within the limits of the unit);

(xi) no-litigation pending or threatened against the user with respect to the authority of the user to enter into the bond transaction or to perform its obligations thereunder;

(xii) documents are in substantially the form approved by or on behalf of the corporation; and

(xiii) incorporated as exhibits, if applicable (or may be included as separate documents if certified as to accuracy):

(I) copy of articles of incorporation or other evidence of creation as cer-

tified by the appropriate state official;

(II) copy of by-laws, partnership, or other agreement;

(III) copy of certificate from appropriate state official of state of incorporation or creation of continued existence and good standing, dated within 60 days of transcript submission; and

(IV) for a user created outside the state of Texas, copies of certificate of good standing from the Comptroller of Public Accounts of Texas and certificate of the Secretary of State of Texas evidencing authority to do business in the state of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (1) exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution or other evidence approving the bond financing and related documents.

§53.198. *Bank/Credit Facility Documentation.* The following shall constitute bank/credit facility documentation:

(1) if a bank or other entity is involved as trustee or escrow agent, evidence of the entity's corporate authority to act as such;

(2) if a credit or similar agreement is to be submitted in executed form pursuant to §53.194(3) of this title (relating to Public Financing Document), evidence of the credit facility's corporate authority to act as such;

(3) authority for specified officers to execute transcript documents and signature identification of such officers.

§53.199. *Documentation of Guarantor.* If the bonds are guaranteed by another entity, such entity must furnish the same documentation as the user, to the extent applicable.

§53.200. *Miscellaneous.*

(a) Any agreement relating to any project shall contain a provision that in the event of a default in the payment of the principal of or the interest or premium on the bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments and loan payments and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

(b) If a corporation finances projects in enterprise zones designated under the Texas Enterprise Zone Act, Texas Civil Statutes, Article 5190.7, as amended, please contact the Public Finance Section for additional transcript requirements.

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TRD-8710067

Lou McCreary
Special Assistant
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Office of the Attorney
General

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For further information, please call
(512) 463-2087.

Subchapter N. Health Facilities Corporation Bonds

★ 1 TAC §§53.211-53.217

The Office of the Attorney General adopts on an emergency basis new §§53.211-53.217, concerning health facilities corporation bonds. The new sections are adopted to conform with Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005) which prohibits the issuance of certain bonds after November 1, 1987, without approval by the Texas Attorney General. The new sections prevent imminent peril of the state by avoiding disruption of the municipal bond industry pending implementation of Senate Bill 56.

The new sections are adopted on an emergency basis under to Texas Civil Statutes, Article 6252-13a, and Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005), which provide the Office of the Attorney General with the authority to adopt rules necessary to carry out the purposes of Senate Bill 56 in implementing the review process for certain bonds.

§53.211. *Generally.* In addition to the requirements of Subchapter L, this subchapter outlines the minimum transcript requirements prerequisite to approval of bonds issued pursuant to the Health Facilities Development Act (the Act), Texas Civil Statutes, Article 1528j, as amended. Unless otherwise indicated in this subchapter, terms not defined herein have the meaning assigned to them in the Act.

§53.212. *Basic Financing Documents.* The following shall constitute basic financing documents:

(i) loan agreement or other financing document between the corporation and the user;

(2) trust indenture, bond resolution, or other document, which shall include the following provisions:

(A) terms of the sale of the bonds, i.e., negotiated, competitive or otherwise, identification of the purchaser, whether sold at par or discount;

(B) place and manner of payment for the bonds;

(C) title, aggregate amount, denomination, bond number(s), and purpose of the bonds;

(D) maturity schedule;
(E) payment date(s), interest rate(s), and/or method or formula for setting the interest rate(s);
(F) redemption provisions, if any;

(G) designation of registrar and provisions for registration and transfer of the bonds;

(H) form of bond, including on the face of all bonds a statement to the effect that neither the State of Texas nor any political subdivision or agency of the State of Texas, including the sponsoring entity, shall be obligated to pay the bonds or the interest thereon and neither the faith and credit nor the taxing power of the State of Texas, the sponsoring entity, or any other political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on the bonds;

(I) pledge and source of payment of the bonds and disposition of the bond proceeds;

(J) creation and designation of all funds relating to the disposition of bond proceeds and to the payment and security for the bonds; and

(K) authorization to use official seal on the bonds and for the appropriate officers to sign the bonds and the form of such signature and seal (manual and/or facsimile);

(3) credit agreement or other documents such as tender agent agreement or remarketing agreement which provide or facilitate credit enhancement for the bonds, if any. If the corporation is not a party to the credit agreement or other credit enhancement agreements, such agreement need only be submitted in substantially final form, unexecuted;

(4) guarantee agreement or other documents guaranteeing the bonds if any;

(5) official statement (or preliminary official statement if the official statement is not available) or other offering document and official notice of sale, if any;

(6) bond purchase agreement, if any. Such agreement need not be governed by Texas law, but the rights, duties, obligations, and liabilities of the corporation must be controlled by Texas law;

(7) deed of trust or other mortgage documents, if any, in substantially final form, unexecuted.

§53.213. *Documentation of Governing Body.* The following shall constitute documentation of governing body:

(1) copy of affidavit of publication of notice of public hearing held pursuant to the Internal Revenue Code of 1986 (the Code), §147(f), if applicable (this document and the minutes of the public hearing may alternatively be part of the documentation of the corporation);

(2) minutes of public hearing with summary of testimony attached, if appli-

able;

(3) certificate of receipt of notice from corporation to governing body of intent to issue bonds, such notice including description, projected cost, and necessity for the health facility, name of proposed user of the facility, or a cash flow forecast, as applicable;

(4) evidence of approval of the issuance of the bonds by the governmental unit or units pursuant to the Code, §147(f), if applicable;

(5) undated general certificate of the governing body, including certifications and provisions with respect to:

(A) approval of the by-laws of the corporation and all amendments thereto, if any;

(B) incumbency of the officers and directors of the corporation; and

(C) whether any action has been taken pursuant to the Act, §4.12, or otherwise to limit the effectiveness of the bond resolution or affect the bond transaction.

§53.214. *Documentation of Corporation.* The following shall constitute documentation of corporation:

(1) either:

(A) undated general certificate of the corporation, executed by at least two officers of the corporation, which includes certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:

(i) incumbency of the officers and directors;

(ii) due incorporation, valid existence, and good standing;

(iii) official seal;

(iv) any default with respect to any obligations of the corporation, based upon best knowledge and belief;

(v) no amendments to the corporation's articles of incorporation or by-laws since last submission of bonds or, in the alternative, copies of any amendments;

(vi) appointment of authorized representative, if any;

(vii) signature identifications;

(viii) no-litigation pending or threatened against the corporation with respect to the issuance of the bonds, or the title or authority of the officers and directors of the corporation;

(ix) the bond documents were properly executed by the corporation, have not been amended or rescinded, and due performance thereof has been authorized by the corporation;

(x) the terms and performance of the bond documents by the corporation are not in conflict with the articles of incorporation or by-laws of the corporation or any other instrument or restriction to which the corporation is a party or subject to;

(xi) documents are in substantially the form approved by or on behalf of the corporation; and

(xii) incorporated as exhibits

(or may be included as separate documents if certified as to accuracy):

(I) for the initial submission of bonds, a copy of the corporation's articles of incorporation as certified by the Secretary of State of Texas and by-laws; and

(II) copy of certificate of continued existence from the Secretary of State of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution designating management committee(s), if any;

(3) resolution authorizing issuance of the bonds, including the following provisions:

(A) title of bonds;

(B) legal citation for authority to issue bonds;

(C) specific purpose for which the bonds are issued;

(D) identification of the user;

and
(E) total principal amount of bonds to be issued.

§53.215. *Documentation of User.* The following shall constitute documentation of user:

(1) either:

(A) undated general certificate of the user, including certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:

(i) due incorporation or creation, valid existence, and good standing;

(ii) incumbency of officers executing bond documents;

(iii) appointment of authorized representative, if any;

(iv) signature identifications;

(v) the bond documents were properly executed by the user, have not been amended or rescinded, and due performance thereof has been authorized;

(vi) the terms and performance of the bond documents by the user are not in conflict with the articles of incorporation, by-laws, partnership, or other agreement of the user or any other instrument or restriction to which the user is a party or subject to;

(vii) receipt of all necessary permits and approvals of governmental bodies or agencies with respect to the issuance and sale of the bonds and the user has received or expects to receive and has applied or shall apply with due diligence for all necessary permits and approvals with respect to the construction or operation of the project;

(viii) no event has occurred since the date of the user's application to the corporation that would result in a material adverse change in the financial condition of the user or in the user's ability to perform its obligations under the bond transaction documents or certification that the corporation has been provided with a complete description of the facts and circumstances of such event;

(ix) no default under any agreement to which the user is a party which would have a material adverse effect on the user or certification that the corporation has been provided with a complete description of the facts and circumstances of such default;

(x) location of project facilities (whether located within limits of the sponsoring entity);

(xi) no-litigation pending or threatened against the user with respect to the authority of the user to enter into the bond transaction or to perform its obligations thereunder;

(xii) documents are in substantially the form approved by or on behalf of the corporation; and

(xiii) incorporated as exhibits (or may be included as separate documents if certified as to accuracy), if applicable:

(I) copy of articles of incorporation or other evidence of creation as certified by the appropriate state official;

(II) copy of by-laws, partnership, or other agreement;

(III) copy of certificate from appropriate state official of state of incorporation or creation of continued existence and good standing, dated within 60 days of transcript submission; and

(IV) for user created outside this state, copies of certificate of good standing from the Comptroller of Public Accounts of Texas and certificate of the Secretary of State of Texas evidencing authority to do business in the State of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution or other evidence of approval of the bond financing and related documents.

§53.216. Bank/Credit Facility Documentation. The following shall constitute bank/credit facility documentation:

(1) if a bank or other entity is involved as trustee or escrow agent, evidence of the entity's corporate authority to act as such;

(2) if a credit or similar agreement is to be submitted in executed form pursuant to §53.212(3) of this title (relating to Basic

Financing Documents), evidence of the credit facility's corporate authority to act as such;

(3) authority for specified officers to execute transcript documents and signature identification of such officers.

§53.217. Documentation of Guarantor. If the bonds are guaranteed by another entity, such entity must furnish the same documentation as the user, to the extent applicable.

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Lou McCreary
Special Assistant
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Office of the Attorney
General

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For further information, please call
(512) 463-2087.



Subchapter O. Housing Finance Corporation Bonds

★ 1 TAC §§53.227-53.233

The Office of the Attorney General adopts on an emergency basis new §§53.227-53.233, concerning housing finance corporation bonds. The new sections are adopted on an emergency basis to conform with Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005) which prohibits the issuance of certain bonds after November 1, 1987, without approval by the Texas attorney general. The new sections prevent imminent peril of the state by avoiding disruption of the municipal bond industry pending implementation of Senate Bill 56.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, and Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005), which provide the Office of the Attorney General with the authority to adopt rules necessary to carry out the purposes of Senate Bill 56 in implementing the review process for certain bonds.

§53.227. Generally.

(a) In addition to the requirements of Subchapter L of this chapter (relating to General Requirements for Nonprofit Corporation Bonds), this subchapter outlines the minimum transcript requirements prerequisite to approval of housing finance corporation bonds issued pursuant to Texas Local Government Code (the Code) Chapter 394, Housing Finance Corporation Act (the Act). Unless otherwise indicated in this subchapter, terms not defined herein have the meanings assigned to them in the Act and the Code.

(b) Unless otherwise indicated, the following requirements apply to single family

and multifamily housing bonds issued by a housing finance corporation (the issuer).

§53.228. Basic Financing Documents. The following shall constitute basic financing documents:

(1) loan agreement or other financing document;

(2) trust indenture, bond resolution, or other document which shall include the following provisions:

(A) terms of the sale of the bonds, i.e., negotiated, competitive or otherwise, identification of the purchaser, whether sold at par or discount;

(B) place and manner of payment for the bonds;

(C) title, aggregate amount, denomination, bond number(s), and purpose of the bonds;

(D) maturity schedule;

(E) payment date(s), interest rate(s), and/or method or formula for setting interest rate(s);

(F) redemption provisions, if any;

(G) designation of registrar and provisions for registration and transfer of the bonds;

(H) form of bond, including on the face of all bonds a statement to the effect that such bonds have been issued under the act and do not constitute, within the meaning of any statutory or constitutional provision, an indebtedness, an obligation, or a loan of credit of the State of Texas, the local government, or any other municipality, county, or other municipal or political corporation or subdivision of the State of Texas;

(I) pledge and source of payment of the bonds and disposition of the bond proceeds;

(J) creation and designation of all funds relating to the disposition of bond proceeds and the payment and security for the bonds; and

(K) authorization to use official seal on the bonds and for the appropriate officers to sign the bonds and the form of such signature and seal (manual and/or facsimile);

(3) credit agreement or other documents such as tender agent agreement or remarketing agreement which provide or facilitate credit enhancement for the bonds, if any. If the issuer is not a party to the credit agreement or other credit enhancement agreements, such agreement need only be submitted in substantially final form, unexecuted;

(4) guarantee agreement or other documents guaranteeing the bonds, if any;

(5) official statement (or preliminary official statement if the official statement is not available) or other offering document and official notice of sale, if any;

(6) bond purchase agreement, if any. Such agreement need not be governed by Texas law, but the rights, duties, obligations, and liabilities of the issuer must be

controlled by Texas law;

(7) deed of trust or other mortgage documents, if any, in substantially final form, unexecuted;

(8) lender documents, if any (i.e., invitation to originate mortgage financing, offer to originate mortgage financing, origination and sale agreement, servicing agreement, etc.).

§53.229. *Documentation of Governing Body.* The following shall constitute documentation of governing body:

(1) copy of affidavit of publication of notice of public hearing held pursuant to the Internal Revenue Code of 1986 (the Code), §147(f), if applicable (this documentation and the minutes of the hearing may alternatively be part of the documentation of the issuer);

(2) minutes of public hearing with summary of testimony attached, if applicable;

(3) evidence of approval of the issuance of the bonds by the governmental unit or units pursuant to the Code, §147(f), if applicable;

(4) undated general certificate of the governing body, including certifications and provisions with respect to:

(A) incumbency of the officers and directors of the issuer;

(B) whether the governing body has created a joint housing finance corporation (a joint issuer) and if so, that the governing body has not created any other joint issuer with powers as provided in the Act, §394.012(c);

(C) approval of all amendments to the issuer's articles of incorporation, if any; and

(D) whether any action has been taken pursuant to the Act, §394.016(c), or otherwise to limit the effectiveness of the bond resolution or affect the bond transaction.

§53.230. *Documentation of Issuer.* The following shall constitute documentation of issuer:

(1) either:

(A) undated general certificate of the issuer, executed by at least two officers of the issuer, which includes certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:

(i) incumbency of the officers and directors;

(ii) due incorporation, valid existence, and good standing;

(iii) official seal;

(iv) any default with respect to any obligations of the issuer, based upon best knowledge and belief;

(v) no amendments to the issuer's articles of incorporation or bylaws since last submission of bonds or, in the alternative, copies of any amendments;

(vi) compliance with the Act, §394.005;

(vii) appointment of authorized representative, if any;

(viii) signature identifications;

(ix) no-litigation pending or threatened against the issuer with respect to the issuance of the bonds or the title or authority of the officers and directors of the issuer;

(x) bond documents properly executed by the issuer, which have not been amended or rescinded, and due performance thereof has been authorized by the issuer;

(xi) the terms and performance of the bond documents by the issuer which are not in conflict with the articles of incorporation or bylaws of the issuer or any other instrument or restriction to which the issuer is a party or subject to;

(xii) if a joint issuer, that such issuer is not operating in more than one state planning region;

(xiii) the directors of the issuer are residents of the local government or if a joint issuer, that the directors reside in a sponsoring local government;

(xiv) if the proceeds of the bonds are used for a residential development, that such development is located within the local government;

(xv) the issuer's articles of incorporation, most recent annual report, and all other filings have been delivered to the Texas Department on Aging;

(xvi) documents are in substantially the form approved by or on behalf of the issuer; and

(xvii) incorporated as exhibits (or may be included as separate documents if certified as to accuracy):

(I) for the initial submission of bonds, a copy of the issuer's articles of incorporation as certified by the secretary of state of Texas and bylaws; and

(II) copy of certificate of continued existence from the secretary of state of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph, exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution authorizing issuance of the bonds, including the following provisions:

(A) title of bonds;

(B) legal citation for authority to issue bonds;

(C) specific purpose for which the bonds are issued;

(D) identification of the user; and

(E) total principal amount of bonds to be issued.

§53.231. *Documentation of Developer*

(*Multifamily Bonds Only*). The following shall constitute documentation of developer:

(1) either:

(A) undated general certificate of the developer, including certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing document(s) with respect to:

(i) due incorporation or creation, valid existence, and good standing;

(ii) incumbency of officers executing bond documents;

(iii) appointment of authorized representative, if any;

(iv) signature identification;

(v) the bond documents were properly executed by the developer, have not been amended or rescinded, and due performance thereof has been authorized by the developer;

(vi) the terms and performance of the bond documents by the developer are not in conflict with the articles of incorporation or bylaws, partnership or other agreement, of the developer or any other instrument or restriction to which the developer is a party or subject to;

(vii) receipt of all necessary permits and approvals of governmental bodies or agencies with respect to the issuance and sale of the bonds and the developer has received or expects to receive and has applied or shall apply with due diligence for all necessary permits and approvals with respect to the construction or operation of the project;

(viii) no event has occurred since the date of the developer's application to the issuer that would result in a material adverse change in the financial condition of the developer or in the developer's ability to perform its obligation under the bond transaction documents or certification that the issuer has been provided with a complete description of the facts and circumstance of such event;

(ix) any default under any agreement to which the developer is a party which would have a material adverse effect on the developer or certification that the issuer has been provided with a complete description of the facts and circumstance of such default;

(x) no-litigation pending or threatened against the developer with respect to the authority of the developer to enter into the bond transaction or to perform its obligations thereunder;

(xi) documents are in substantially the form approved by or on behalf of the issuer; and

(xii) incorporated as exhibits, if applicable (or may be included as separate documents if certified as to accuracy):

(I) copy of articles of incorporation or other evidence of creation as certified by the appropriate state official;

(II) copy of bylaws, partnership, or other agreement;

(III) copy of certificate from appropriate state official of state of incorporation or creation of continued existence and good standing, dated within 60 days of transcript submission; and

(IV) if a developer created outside the State of Texas, certificate of good standing from the comptroller of public accounts of Texas and certificate of the secretary of state of Texas evidencing authority to do business in the State of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identifications and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution or other evidence approving the bond financing and related documents;

(3) evidence of compliance with the Act, §394.902, if applicable:

(A) certification by developer of reservation of the units in compliance with the Act, §394.902(a), and certificate of design engineer for the development that the reserved units meet the standards of the Texas Department on Aging; or

(B) form of receipt or other evidence from the issuer or the trustee acknowledging payment of the required fee pursuant to the Act, §394.902(b) (executed receipt to be submitted post-closing).

§53.232. Bank/Credit Facility Documentation. The following shall constitute bank/credit facility documentation:

(1) if a bank or other entity is involved as trustee or escrow agent, evidence of the entity's corporate authority to act as such;

(2) if a credit or similar agreement is to be submitted in executed form pursuant to §53.228(3) of this title (relating to Basic Financing Documents), evidence of the credit facility's corporate authority to act as such;

(3) authority for specified officers to execute transcript documents and signature identification of such officers.

§53.233. Documentation of Guarantor. If the bonds are guaranteed by another entity, such entity must furnish the same documentation as the developer, to the extent applicable.

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For further information, please call
(512) 463-2087.



Subchapter P. Other Corporation Bonds

★ 1 TAC §§53.244-53.250

The Office of the Attorney General adopts on an emergency basis §§53.244-53.250, concerning other corporation bonds. The new sections are adopted on an emergency basis to conform with Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005) which prohibits the issuance of certain bonds after November 1, 1987, without approval by the Texas attorney general. The new sections prevent imminent peril of the state by avoiding disruption of the municipal bond industry pending implementation of Senate Bill 56.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, and Senate Bill 56, 70th Legislature, 1987, Chapter 53 (Texas Civil Statutes, Article 717k-8, §§3.001-3.005), which provide the Office of the Attorney General with the authority to adopt rules necessary to carry out the purposes of Senate Bill 56 in implementing the review process for certain bonds.

§53.244. Generally.

(a) In addition to the requirements of Subchapter L, this subchapter outlines the minimum transcript requirements prerequisite to approval of bonds issued for certain corporation financings pursuant to statutes other than Texas Civil Statutes, Articles 5190.6 and 1528j, as amended, and Texas Local Government Code, Chapter 394. Unless otherwise indicated in this subchapter, terms not defined herein have the meanings assigned to them in Texas Civil Statutes, Article 5190.6.

(b) The nature of the financing and the statutory authority used will dictate the specific transcript requirements. The minimum requirements that can be expected are outlined in this subchapter. The issuing corporation (the issuer) is encouraged to contact the Public Finance Section prior to taking official action with respect to the financing in order to determine the additional documentation that will be necessary for approval of the bonds.

§53.245. Basic Financing Documents. The following shall constitute basic financing documents:

(1) loan agreement or other financing document;

(2) trust indenture, bond resolution, or other document, which shall include the following provisions:

(A) terms of the sale of the bonds, i.e., negotiated, competitive or otherwise, identification of the purchaser, whether sold at par or discount;

(B) place and manner of payment for the bonds;

(C) title, aggregate amount, denomination, bond number(s), and purpose of the bonds;

(D) maturity schedule;

(E) payment date(s), interest rate(s), and/or method or formula for setting interest rate(s);

(F) redemption provisions, if any;

(G) designation of registrar and provisions for registration and transfer of the bonds;

(H) form of bond;

(I) pledge and source of payment of the bonds and disposition of the bond proceeds;

(J) creation and designation of all funds relating to the disposition of bond proceeds and to the payment and security for the bonds; and

(K) authorization to use official seal on the bonds and for the appropriate officers to sign the bonds and the form of such signature and seal (manual and/or facsimile); and

(3) credit agreement or other documents such as tender agent agreement or remarketing agreement which provide or facilitate credit enhancement for the bonds, if any. If the issuer is not a party to the credit agreement or other credit enhancement agreements, such agreement need only be submitted in substantially final form, unexecuted;

(4) guarantee agreement or other documents guaranteeing the bonds, if any;

(5) official statement (or preliminary official statement if the official statement is not available) or other offering document and official notice of sale, if any;

(6) bond purchase agreement, if any. Such agreement need not be governed by Texas law, but the rights, duties, obligations, and liabilities of the issuer must be controlled by Texas law;

(7) deed of trust or other mortgage documents, if any, in substantially final form, unexecuted.

§53.246. Documentation of Governing Body. The following shall constitute documentation of governing body:

(1) Copy of affidavit of publication of notice of public hearing and minutes of the public hearing, with summary of testimony attached, held pursuant to the Internal Revenue Code of 1986 (the Code), §147(f), if applicable (this documentation may alternatively be part of the documentation of the issuer).

(2) Evidence of approval of the issuance of the bonds by the governmental unit or units pursuant to the Code, §147(f), if applicable.

(3) Undated general certificate of the governing body, including certifications and provisions with respect to incumbency of the officers and directors of the issuer.

§53.247. Documentation of Issuer. The following shall constitute documentation of issuer:

(1) either:

(A) undated general certificate of

the issuer, executed by at least two officers of the issuer, which includes certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:

- (i) incumbency of the officers and directors;
 - (ii) due incorporation, valid existence, and good standing;
 - (iii) official seal;
 - (iv) any default with respect to any obligations of the issuer, based upon best knowledge, and belief;
 - (v) no amendments to the issuer's articles of incorporation or by-laws since last submission of bonds or, in the alternative, copies of any amendments;
 - (vi) documents are in substantially the form approved by or on behalf of the issuer;
 - (vii) appointment of authorized representative, if any;
 - (viii) signature identifications;
 - (ix) the bond documents were properly executed by the issuer, which have not been amended or rescinded, and due performance thereof has been authorized by the issuer;
 - (x) the terms and performance of the bond documents by the issuer, which are not in conflict with the articles of incorporation or by-laws of the issuer or any other instrument or restriction to which the issuer is a party or subject to;
 - (xi) no-litigation pending or threatened with respect to the issuance of the bonds, or the title or authority of the officers and directors of the issuer; and
 - (xii) incorporated as exhibits (or may be included as separate documents if certified as to accuracy):
 - (I) for the initial submission of bonds, a copy of the issuer's articles of incorporation as certified by the Secretary of State of Texas and by-laws; and
 - (II) copy of certificate of continued existence from the Secretary of State of Texas, dated within 60 days of transcript submission; or
 - (B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certificates; and
 - (C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;
- (2) resolution authorizing issuance of the bonds, including the following provisions:
- (A) title of bonds;
 - (B) legal citation for authority to issue bonds;
 - (C) specific purpose for which the bonds are issued;
 - (D) identification of the user; and
 - (E) total principal amount of

bonds to be issued.

§53.248. *Documentation of User.* The following shall constitute documentation of user:

- (1) either:
 - (A) undated general certificate of the user, including certifications and provisions (or confirmation of any such certifications and provisions which are contained in the basic financing documents) with respect to:
 - (i) due incorporation or creation, valid existence, and good standing;
 - (ii) incumbency of officers executing bond documents;
 - (iii) appointment of authorized representative, if any;
 - (iv) signature identifications;
 - (v) the bond documents were properly executed by the user, have not been amended or rescinded, and due performance thereof has been authorized by the user;
 - (vi) the terms and performance of the bond documents by the user are not in conflict with the articles of incorporation, by-laws, partnership or other agreement, of the user or any other instrument or restriction to which the user is a party or subject to;
 - (vii) receipt of all necessary permits and approvals of governmental bodies or agencies with respect to the issuance and sale of the bonds and that the user has received or expects to receive and has applied or shall apply with due diligence for all necessary permits and approvals with respect to the construction and operation of the project;
 - (viii) no event has occurred since the date of the user's application to the issuer that would result in a material adverse change in the financial condition of the user or in the user's ability to perform its obligations under the bond transaction documents, or certification that the issuer has been provided with a complete description of the facts and circumstances of such event;
 - (ix) no default under any agreement to which the user is a party which would have a material adverse effect on the user, or certification that the issuer has been provided with a complete description of the facts and circumstances of such default;
 - (x) no-litigation pending or threatened with respect to the authority of the user to enter into the bond transaction or to perform its obligations thereunder;
 - (xi) documents are in substantially the form approved by or on behalf of the issuer; and
 - (xii) incorporated as exhibits, if applicable (or may be included as separate documents if certified as to accuracy):
 - (I) copy of articles of incorporation or other evidence of creation as certified by the appropriate state official;
 - (II) copy of by-laws, partnership, or other agreement;
 - (III) copy of certificate from appropriate state official of state of incor-

poration or creation of continued existence and good standing, dated within 60 days of transcript submission; and

(IV) for a user created outside the State of Texas, copies of certificate of good standing from the Comptroller of Public Accounts of Texas and certificate of the Secretary of State of Texas evidencing authority to do business in the State of Texas, dated within 60 days of transcript submission; or

(B) dated general certificate with the same certifications listed in subparagraph (A) of this paragraph exclusive of signature identifications and no-litigation certifications; and

(C) undated signature identification and no-litigation certificate which confirms the representations in the general certificate;

(2) resolution or other evidence of approval of the bond financing and related documents.

§53.249. *Bank/Credit Facility Documentation.* The following shall constitute bank/credit facility documentation:

(1) if a bank or other entity is involved as trustee or escrow agent, evidence of the entity's corporate authority to act as such;

(2) if a credit or similar agreement is to be submitted in executed form pursuant to §53.245(3) of this title (relating to Basic Financing Documents) evidence of the credit facility's corporate authority to act as such;

(3) authority for specified officers to execute transcript documents and signature identification of such officers.

§53.250. *Documentation of Guarantor.* If the bonds are guaranteed by another entity, such entity must furnish the same documentation as the user, to the extent applicable.

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Special Assistant
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For further information, please call
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**TITLE 16. ECONOMIC
REGULATION**
**Part IV. Texas Department
of Labor and Standards**
**Chapter 75. Air Conditioning
and Refrigeration**
Contractors License Law

★ 16 TAC §75.6

The Texas Department of Labor and Stan-

dards adopts on an emergency basis the repeal of §75.6, concerning insurance requirement. The emergency repeal encompasses refrigeration contractors. The repeal is adopted on an emergency basis to protect the safety, welfare, and health of air conditioning and refrigeration consumers in Texas.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 5221c, which provide the commissioner of the Texas Department of Labor and Standards with the authority to repeal rules for the practice of air conditioning and refrigeration contracting consistent with the Act.

§75.6. *Insurance Requirement.*

Issued in Austin, Texas, on November 9, 1987.

TRD-8710199 Larry E. Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

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



The Texas Department of Labor and Standards adopts on an emergency basis new §75.6, concerning insurance requirement. The emergency new section encompasses refrigeration contractors.

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

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 5221c, which provide the commissioner of the Texas Department of Labor and Standards with the authority to adopt rules for the practice of air conditioning and refrigeration contracting consistent with the Act.

§75.6. *Insurance Requirement.*

(a) Each Class A license applicant or holder shall have in force commercial general legal liability insurance in an amount not less than \$500,000 combined for property damage and bodily injury sustained by one or more persons, and \$500,000 aggregate, and \$500,000 aggregate for products and completed operations. In the event claims occur which hold the required coverage to a level of \$400,000 or less, the licensee shall reinstate the coverage to the original \$500,000 amount or greater.

(b) Each Class B license applicant or holder shall have in force commercial general legal liability insurance in an amount not less than \$200,000 combined for property damage and bodily injury sustained by one or more persons, and \$200,000 aggregate, and \$200,000 aggregate for products and completed operations. In the event claims occur which hold the required coverage to a level

of \$150,000 or less, the licensee shall reinstate the coverage to the original \$200,000 amount or greater.

(c) The products and completed operations liability covers the public and the contractor from claims arising from an occurrence after the job is completed.

(d) A license applicant or holder shall furnish to the department a certificate of insurance as evidence of the insurance required in subsection (a) or (b) of this section. The certificates of insurance shall be issued to each municipality where air conditioning and refrigeration contracting is performed.

(e) The certificate of insurance shall certify that the policy has been endorsed with the provision that in the event such coverage is canceled or reduced, the insurance carrier shall notify the department at least 45 days prior to such cancellation or reduction in coverage. Each nonrenewal notice shall also be submitted by the insurance carrier to the department at least 45 days prior to the renewal date.

(f) Each license shall be suspended during any period during which the required insurance is not in effect by evidence of a current certificate of insurance on file with the department or when the required level of insurance has not been reinstated as required in subsection (a) or (b) of this section.

(g) The commissioner may waive the insurance requirements for license applicant or holder not contracting with the general public. All requests to waive the insurance requirements shall be submitted in writing to the director and shall contain a detailed explanation of the conditions on which the license applicant or holder is requesting the waiver.

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TRD-8710198 Larry E. Kosta
Assistant Commissioner
Texas Department of
Labor and Standards

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For further information, please call
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**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**
**Part II. Texas Parks and
Wildlife Department**
**Chapter 55. Law Enforcement
Operation Game Thief Fund**
***31 TAC §§55.111, 55.114, 55.115**

The Texas Parks and Wildlife Department, Operation Game Thief Committee, adopts on an emergency basis amendments to §55.111 and §55.114, and new §55.115, concerning operation game thief fund. House Bill 1195, 70th Legislature, 1987, gives the

Operation Game Thief Committee more authority in implementing rules and establishing procedures for the payment of rewards in the Operation Game Thief Program.

Section 55.114 as currently worded is not in compliance with House Bill 1195 because it restricts the disbursements of rewards only after review by the committee at public meetings twice a year (April and October). This method of granting rewards has resulted in undue delays in the payment of rewards. This section is amended to make it consistent with the purpose of the Operation Game Thief Program, by authorizing reward payments to eligible applicants as soon as possible after final conviction. Section 55.111 is amended by adding the term "coordinator" in the definitions section. Section 55.114 is amended by deleting the restrictions and authorizes the necessary latitude for the committee to delegate the disbursement of rewards to eligible applicants in a more timely manner.

Chapter 55 is amended further by adding new §55.115, which creates a statute of limitations on unclaimed rewards for bookkeeping purposes.

The committee finds that imminent peril to the public's wildlife resources requires the adoption of the amendments on an emergency basis.

The amendments are adopted on an emergency basis under the Texas Parks and Wildlife Code, Chapter 12, Subchapter C, which provides the Operation Game Thief Committee with the authority to adopt rules for the implementation of the Operation Game Thief Program.

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

Coordinator—The staff member appointed by the director to coordinate the Operation Game Thief Program.

§55.114. *Rewards: Payment.*

(a) The amount of reward granted to eligible applicants **may not exceed \$300 and shall be determined on an individual basis by the coordinator, with the approval of the director of law enforcement, [committee]** according to the degree of flagrancy of each violation.

(b) In the event two or more eligible applicants furnish information pertaining to a specific flagrant violation, the reward may be divided among the eligible applicants in an amount determined by the **coordinator, with the approval of the director of law enforcement [committee].**

(c) **At each meeting, the committee shall review all disbursements of rewards made by the coordinator since the last committee meeting and may increase the amount of any reward paid or approve additional rewards.**

§55.115. *Limitations: Unclaimed Rewards.*

(a) Rewards granted to eligible applicants that remain unclaimed for a period of two years from the date granted and approved by the committee shall be terminated and the money returned to the fund.

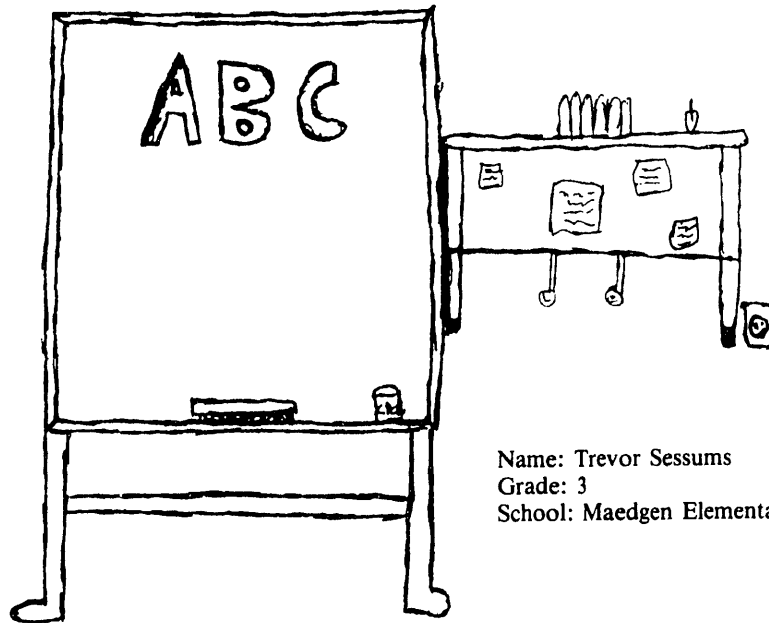
(b) A request from an eligible applicant for a reward that has been terminated may be resubmitted to the committee for consideration of reinstatement at the next scheduled committee meeting.

Issued in Austin, Texas, on November 12, 1987.

TRD-8710157

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: November 23, 1987
Expiration date: March 23, 1988
For further information, please call
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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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 3. Oil and Gas

Division

Conservation Rules and Regulations

★ 16 TAC §3.34

The Railroad Commission of Texas proposes an amendment to §3.34 (Statewide Rule 34), concerning gas to be produced and purchased ratably. The amendment is to subsection (h)(3), regarding one of the requirements for qualifying an affiliate as a separate first purchaser. The amendment prohibits an offer to purchase gas in the special marketing program or for any release of gas for sale in the special marketing program to require modification of any existing contract provisions, and clarifies that volume-for-volume credits are to be credited against the contract from which gas is released for sale in the special marketing program.

Lisa C. Anderson, hearings examiner, has determined that for the first five-year period of 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.

Ms. Anderson 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 increased understanding of the section; greater prevention of waste of oil and gas; and increased prevention of discrimination in the production and purchasing of natural gas. The possible economic cost to individuals who are required to comply with this section as proposed will be negligible.

Comments on the proposal may be submitted to Lisa C. Anderson, Office of General Council, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number for the proposed amendment is 20-91,626. Comments must be filed by 5 p.m., January 8, 1988.

The amendment is proposed under the Texas Natural Resources Code, §81.052,

85.202, 85.046, 86.012, 86.041, 111.083, 111.090, and 111.113, which provides the Railroad Commission of Texas with the authority to adopt sections for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to effectuate the provision and purposes of the Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; and to regulate common purchasers of oil and gas to achieve the prior purposes.

§3.34. Gas to be Produced and Purchased Ratably.

(a)-(g) (No change.)

(h) If a first purchaser elects to qualify an affiliate as a separate first purchaser in §3.30(a)(1) of this title (relating to Gas Nominations Required) (Statewide Rule 30), the first purchaser may designate the affiliate as a special marketing program. The special marketing program must comply with the following with respect to the nomination, purchase, and acceptance of delivery of natural gas.

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

(3) It is unreasonably discriminatory, and therefore prohibited, for the offer to purchase gas in the special marketing program, or for any release of gas for sale in the special marketing program to require release of any claims under any existing contract or require modification of any existing contract provisions other than a release of the gas for sale in the special marketing program or a requirement of a volume-for-volume basis for gas taken in the special marketing program to be credited against the [any existing] contract from which gas is released for sale in the special marketing program, if the credit provision is limited to the period of actual participation in the special marketing program. Nothing in this paragraph shall prohibit an operator of any well from offering terms inconsistent with these provisions. The making of an offer which is not accepted shall not affect rights under existing contracts.

(4)-(7) (No change.)

(i)-(l) (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 November 9, 1987.

TRD-8710242

Walter E. Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
December 21, 1987
For further information, please call
(512) 463-7149.



Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

★ 16 TAC §5.501

The Railroad Commission of Texas proposes an amendment to §5.501, concerning the definition of commercial motor vehicles. The amendment exempts the vehicles of farmers and ranchers used for agricultural purposes from the requirement that commercial motor vehicles be registered with the Railroad Commission of Texas.

Ronald D. Stutes, hearings examiner, has determined that for each year of the first five-year period the amendment will be in effect there will be fiscal implications for small businesses, as small farmers will be able to avoid the large premiums for the liability insurance levels otherwise required. There will be no effect on state and local government as a result of enforcing the amendment.

Mr. Stutes also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the avoidance of economic burdens on small farms and ranches. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Public comment is invited and may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, and C. Tom Clowe, Director, Transportation Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 911b, §4(a)(13), which give the commission authority to define commercial motor vehicle.

§5.501. Definitions.

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

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the following are not subject to the provisions of this subchapter:

(1)-(5) (No change.)

(6) a motor vehicle controlled and operated by a farmer or rancher and transporting:

(A) the farmer's or rancher's agricultural or horticultural commodities and products; or

(B) supplies to the farm or ranch of the farmer or rancher.

(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.

Issued in Austin, Texas, on November 9, 1987.

TRD-8710241

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
December 21, 1987

For further information, please call
(512) 463-7149.



TITLE 31. NATURAL RESOURCES AND CONSERVATION Part X. Texas Water Development Board Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (board) proposes new §§375.1-375.3, 375.11-375.21, 375.31-375.38, 375.51, 375.61-375.63, 375.71, 375.72, 375.81-375.88, and 375.101-375.103, comprising Chapter 375, concerning the creation, capitalization by federal grant and state match, purposes, and administration of the state water pollution control revolving fund (fund). The fund will provide low interest loans to eligible political subdivisions in the state under 33 United States Code 1251 et. seq. and the Water Code, §§15.601-15.608.

Sections 375.1-375.3, concerning introductory provisions, describe the scope of the new chapter, give definitions to the terms used in the chapter, and state the policy declarations of the board regarding the operation of the fund.

Program requirements for the fund are detailed in §§375.11-375.20. In §375.11, the entities eligible to receive financial assistance are defined. The period of availability to the state of capitalization grant funds is given in §375.12. In §375.13,

the board is authorized to reserve a percentage of the state's annual allotment for administration of the fund and for planning purposes. The requirement that public hearings be held to consider adoption of the intended use plan and project priority list is given in §375.14. Section 375.15 lists the types of financial assistance which can be provided by the fund and establishes conditions upon loans made from the fund.

In §375.16, provision is made for capitalization grant applications to be submitted annually to the Environmental Protection Agency (EPA). Requirements upon projects to be provided assistance from capitalization grants are given in §375.17. Section 375.18 requires projects to receive assistance from the fund to be on the project priority list, defines entities eligible to be placed on the list, and describes structure and preparation of the list. The process for rating projects to be included in the intended use plan is given in §375.19. Section 375.20 provides for the intended use plan to be prepared annually and submitted to the EPA. The intended use plan contains a description of the goals and objectives of the fund; a list of the projects proposed to receive assistance and information about each project; assurances to the EPA by the board to comply with applicable provisions of 33 United States Code 1251 et. seq.; the criteria and methods for distributing funds among projects, including ranking and categorizing of projects; and requirements to timely submit applications and enter into commitments for assistance. Low interest loans and refinancing of certain debts are described in §375.21 and requirements for qualifying for loans and refinancing are listed.

Procedures for applying for financial assistance and required submittals are given in §§375.31-375.38. In §375.31, prospective applicants are instructed to schedule preplanning and preapplication conferences with the board to receive information on application procedures. General application submittal requirements are given in §375.32. Fiscal data required for submittal are given in §375.33. The legal submittals which are required are in §375.34. Section 375.35 provides for environmental review and determination by the board. It establishes three possible levels of environmental determinations: categorical exclusions; findings of no significant impact; and records of decision. It also establishes the criteria and procedures for making each of the determinations, criteria and procedures for modifying the determinations, and describes the extent and nature of the information needed to support the environmental decisions. The section also provides for authority to construct a portion of a project in advance of receiving an appropriate environmental determination when conditions warrant. Public participation requirements for making each of the environmental determinations are

specified in this section. A facilities planning report is required in §375.36, and the contents and review criteria established. The requirement for a water conservation plan is contained in §375.37, and two different procedures for submittal and approval given. Provision for not requiring a water conservation plan in the event the board determines an emergency exists is also contained in this section. Section 375.38 requires the executive administrator to review applications, states the review criteria, and specifies the conditions for presenting an application to the board.

Board actions on applications are given in §375.51, including placement on the board's agenda, public notice, conduct of the board meeting, and the possible actions and criteria for actions by the board.

Engineering design requirements for projects are given in §§375.61-375.63. Section 375.61 requires value engineering studies be performed on projects with building costs greater than \$10 million and directs applicants to utilize the board's guidance for value engineering studies. In §375.62, the applicants are required to submit engineering plans and specifications for review and approval by the executive administrator. The requirements upon the plans and specifications are given in this section, and in §375.63 criteria are established for approval by the executive administrator.

Section 375.71 and §375.72 contain the actions prerequisite to release of funds from the fund. The required submittals and provision for transfer of funds to the applicant are given in §375.71 for those projects where a partial release of funds is made to facilitate detailed planning. Section 375.72 gives the submittals required to close a loan for construction. The building phase requirements are contained in §§375.81-375.88. Section 375.81 requires loan recipients to comply with appropriate laws and procedures when advertising for bids and awarding construction contracts. Provision for inspection of construction by the project engineer and executive administrator is made in §375.82. Section 375.83 authorizes the executive administrator to inspect materials and require independent testing or correction if deficiencies are found, requires the loan recipient and contractor to assist the executive administrator in ascertaining if work is being performed as required, and authorizes the executive administrator to conduct engineering and financial audits when necessary. Alterations to approved plans and specifications are authorized by the executive administrator and board in §375.84. Provisions for contractor bankruptcy are given in §375.85. Section 375.86 requires that certain information be submitted during the building phase.

Procedures for requesting monthly construction progress payment requests are given in §375.87. Section 375.88 provides

for the withholding of retainage during project building and procedures for releasing retainage as the project progresses.

Post building phase requirements are contained in §§375.101-375.103. Section 375.101 requires the loan recipient to operate and maintain the facilities properly, provide certain documents to the executive administrator upon request, maintain debt service fund and other accounts, report annually in water conservation programs, and comply with mitigative measures required by the board. Section 375.102 requires the loan recipient to certify that the project meets the standards it was designed for. Finally, §375.103 requires a final accounting to be made at the completion of the project.

Ms. Gladys Stansberry, director of accounting, has determined that for the first five-year period the proposed amendments 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.

Ms. Stansberry also has determined that for the first five-year period the amended sections are in effect that the public benefit anticipated as a result of enforcing the amendments as proposed will be the availability of low interest financial assistance to political subdivisions in the state for construction of waste treatment work, for implementation of nonpoint source pollution control programs, and for development and implementation of estuary conservation programs. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

A public hearing to receive oral and written comments will be held at 10 a.m. on Friday, December 11, 1987, in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin. The deadline for receiving written comments is December 31, 1987. Comments may be submitted to C. R. Miertschin, Director of Construction Grants Division, P. O. Box 13231, Austin, Texas 78711.

Introductory Provisions

★31 TAC §§375.1-375.3

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.1 Scope of Rules. These sections, adopted pursuant to the Water Code, §6.101, shall govern the state water pollution control revolving fund as authorized by the Water Code, §§15.601-15.608.

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

Act—The Federal Water Pollution Control Act, as amended, 33 United States

Code 1251 et. seq.

Alternative technology—Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (nonpotable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

Authorized representative—The signatory agent of the applicant authorized and directed by the applicant's governing body to make application for assistance and to sign documents required to undertake and complete the project, on behalf of the applicant.

Best practicable waste treatment technologies—The cost-effective technology that can treat wastewater, combined sewer overflows, and nonexcessive infiltration and inflow in publicly owned or individual wastewater treatment works to meet the applicable provisions of federal and state effluent limitations, groundwater protection, or other applicable standards.

Binding commitment—A legal obligation, enforceable under state law, specifying the terms and schedules under which assistance is provided.

Board—The Texas Water Development Board.

Building—The erection, acquisition, alteration, remodeling, improvement, or extension of treatment works.

Capital financing plan—A plan which:

(A) projects the future requirements for waste treatment services within the applicant's jurisdiction for a period of no less than 10 years;

(B) projects the nature, extent, timing, and costs of future expansion and reconstruction of treatment works which will be necessary to satisfy the applicant's projected future requirements for waste treatment services; and

(C) sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction.

Capitalization grant—Federal grant assistance awarded to the state for the establishment of the state water pollution control revolving fund.

Change order—The documents issued by the loan recipient, upon recommendation of the project engineer and with the approval of the executive administrator, authorizing a change, alteration, or variance in previously approved engineering plans and

specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.

Closing—The time of actual transfer of funds from the board to an applicant for purposes of constructing a project.

Collector sewer—The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property.

Commission—The Texas Water Commission or its predecessors.

Construction—Any one or more of the following:

(A) preliminary planning to determine the feasibility of treatment works;

(B) engineering, architectural, environmental, legal, title, fiscal, or economic studies;

(C) surveys, designs, plans, working drawings, specifications, procedures; and

(D) erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works or the inspection or supervision of any of the foregoing items.

Construction fund—A dedicated source of funds, created and maintained by the applicant in a separate account at an official depository, or a designated depository approved by the executive administrator, used solely for the purposes of construction of a project as approved by the board.

Cost-effectiveness analysis—An analysis performed to determine which waste treatment management system or component part will result in the minimum total monetary (resources) costs over time, without overriding nonmonetary costs, to meet federal, state, and local requirements.

Designated management agency, waste treatment management agency—A political subdivision of the state which is designated by the governor and approved by the EPA to receive federal assistance pursuant to the Act, §208 and §303(e).

Effluent limitation—Any restriction established by the state or the EPA administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discarded from a point source into waters of the state.

Eligible applicant—A waste treatment management agency, including any interstate agencies, or any city, town, county, district, river authority, association, or other public body created by or pursuant to state law which has authority to dispose of sewage, industrial wastes, or other waste, or an authorized Indian tribal organization.

Enforceable requirements of the Act—Those conditions and limitations of permits issued pursuant to the Act, §402 and §404, which, if violated, could result in issuance of a compliance order or initiation

of a civil or criminal action under the Act, §309. Where a permit has not been issued, but issuance is anticipated, the term means any requirement which will be in the permit when issued. Where no permit is applicable, the term means any requirement which is necessary to meet applicable criteria for best practicable waste treatment technology.

Environmental determination—A finding by the board regarding the potential environmental impacts of a proposed project and describing what mitigative measures, if any, the applicant will be required to implement as a condition of financial assistance.

Environmental information document—A written analysis prepared by the applicant describing the potential environmental impacts of a proposed project, sufficient in scope to enable the executive administrator to prepare an environmental assessment to allow an environmental determination to be made by the executive administrator.

Environmental review—The process whereby an evaluation is undertaken by the board, consistent with the National Environmental Policy Act and other federal, state, and local laws and requirements, to determine whether a proposed project may have significant impacts on the environment and therefore require the preparation of an environmental impact statement, as detailed in §375.35 of this title (relating to Required Environmental Review and Determinations).

EPA—The Environmental Protection Agency.

EPA administrator—The chief officer of the Environmental Protection Agency appointed by the president of the United States.

Estuary management plan—A plan for the conservation and management of an estuary of national significance as described in the Act, §320.

Executive administrator—The executive administrator of the Texas Water Development Board.

Facilities planning—Those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act and state statutes, and which consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area and will demonstrate the selected alternative is cost-effective.

Financial assistance—Loans by the board from the state water pollution control revolving fund.

Fund—The state water pollution control revolving fund, created pursuant to the Water Code, Chapter 15, Subchapter J.

Infiltration—Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not

include, and is distinguished from, inflow.

Inflow—Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

Innovative technology—Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

Intended use plan—A plan identifying the intended uses of the amount of funds available for loans in the SRF for each fiscal year as described in the Act, §606(c).

Interceptor sewer—A sewer which is designed for one or more of the following purposes:

(A) to intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;

(B) to replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;

(C) to transport wastewater from one or more municipal collector sewers to another municipality or to a regional facility for treatment; and

(D) to intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

Market interest rate—The average interest rate given in current market dealings for this section of the country/state as determined by the board.

Nonpoint source pollution plan—A plan for managing nonpoint source pollution as described in the Act, §319.

Permit, waste discharge permit—The authority granted by the commission to establish the conditions under which waste may be discharged into or adjacent to waters in the state.

Plans and specifications—The engineering description of the project, including engineering drawings, maps, technical specifications, design reports, and

construction contract documents in sufficient detail to allow contractors to bid on the work.

Point source—Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Priority list—A list of projects for which SRF assistance may be requested.

Project—The scope of work for which a loan is awarded under the SRF.

Project engineer—The engineer or engineering firm retained by the applicant to provide professional engineering services during the planning, design, and/or construction of a project.

Project performance standards—The performance and operation requirements applicable to a project, including the enforceable requirements of the Act and the specifications, including the quantity of excessive infiltration and inflow proposed to be eliminated, which the project is planned to meet.

Regional facility—Wastewater collection and treatment, which incorporates multiple service areas into an areawide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state, the specified size of which is determined by any one or combination of population, number of governmental entities served, and/or service capacity. Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.

State allotment—The sum allocated to the State of Texas for a federal fiscal year, from funds appropriated by congress pursuant to the Act.

SRF—The state water pollution control revolving fund, created pursuant to the Water Code, Chapter 15, Subchapter J.

Treatment works—Any devices and systems which are used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate

disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste.

Value engineering—A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

Water conservation plan—A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area, as further defined in §375.37 of this title (relating to Required Water Conservation Plan).

Water conservation program—A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

Water quality management plan—A plan prepared and updated annually by the state and approved by the Environmental Protection Agency which determines the nature, extent, and causes of water quality problems in various areas of the state and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

§375.3. Policy Declarations.

(a) **General.** The Construction Grants Program, created by the Act, Title II, has been providing financial assistance in the form of grants to Texas communities for the design and construction of waste treatment works since 1972. The 1987 amendments to the Act will phase out the Construction Grants Program after 1990 and leave the provision of financial assistance for such works to the individual states. Historically, the funds needed for the construction of waste treatment works at any particular time have exceeded the amount of assistance funds available many times over. Consequently, the burden upon the state to provide financial assistance will be a great one. In order to ease the transition, the 1987 amendments to the Act also allowed creation and federal funding for the state water pollution control revolving fund, which is intended to be a perpetual fund to provide low interest loan assistance for the construction of waste treatment works during the phase out period and after the end of the Construction Grants Program. Until construction grants are mandatorily discontinued, the option exists to transfer monies appropriated under the Act, Title II, to the fund in lieu of making grants. Such transfers will increase the amount of capitalization monies available to the fund initially and vastly increase the size of the fund over time. It is clearly in the best interest of the State of Texas to do so. Therefore, it is the policy of the board to administer the grants program and the fund to maximize the amounts

of capitalization money available to the fund to ensure the perpetual nature and viability of the fund for the benefit of all of the citizens of the state. Based upon this policy, the board will no longer make grants out of new appropriations after October 1, 1988, except from monies which have been deobligated.

(b) **Regionalization.** In accordance with the provisions of House Bill 2, 69th Legislature, 1985, the board will encourage local political subdivisions of the state to implement regional wastewater treatment facilities consistent with the Texas water plan and the water quality management plan.

(c) **Water conservation.** It is the policy of the board to promote the conservation of water in the state by requiring implementation of those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(d) **Environmental protection.** It is the policy of the board to preserve, protect, restore, and enhance the waters of the state and to prevent, reduce, and eliminate water pollution throughout the state. It is further the policy of the board to support the political subdivisions of the state and to provide financial aid with low interest loans for the prevention, reduction, and elimination of water pollution.

(e) **Management of financial resources.** It is the policy of the board to structure financial assistance to applicants such that the board may maximize financial resources available to the state.

(f) **Projects expedited.** It is the policy of the board to take measures as appropriate and necessary to expedite projects undertaken with the SRF. This may include, but would not be limited to, streamlining procedures for compliance with applicable federal requirements. The board will strive to ensure that SRF funding is efficiently and appropriately applied so that it meets the intent of federal requirements while attending to state goals for water quality management and the needs of the political subdivisions that the program is meant to serve.

(g) **Preferred financial assistance.** It is the policy of the board that financial assistance in the form of guarantees or purchases of insurance for local obligations or for guarantees for local revolving funds will not be offered at this time.

(h) **Lending rate.** It is the policy of the board through the implementation of the lending rate to serve the political subdivisions of the state by making loans with interest rates which reflect the state's cost of matching funds in the SRF. The board will establish rate scales for each maturity of loans to political subdivisions. In establishing the lending rate scales, the board will take into account the true interest cost of the state matching funds, including issuance costs and

the risks associated with the operation of the financial assistance program. The board will continuously review the lending rate scale, in light of current market conditions, and should there be substantial changes in market conditions, alter the scale if changes are necessary. The board reserves the right to determine the lending rate scale applied and maturity schedule for each loan. The board may, from time to time, be approached by political subdivisions with proposed projects which may require special financing by the board. Because of the special and unusual characteristics of these projects, separate lending rates for these projects may be established to fit the special circumstance that may be applicable to these projects.

(i) **Force account.** It is the policy of this board that all significant elements of the project be constructed with skilled laborers and mechanics obtained through the competitive bidding process. The board will not approve the use of force account in the major construction of the project, but may approve the use of force account for inspection and/or minor construction when the applicant demonstrates that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method, or emergency circumstances dictate its use.

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

Issued in Austin, Texas, on November 9, 1987.

TRD-8710120

Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Earliest possible date of adoption:

December 21, 1987

For further information, please call
(512) 463-8489.

Board Action on Application

★31 TAC §375.1

The new section is proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.51. Formal Action by the Board.

(a) **Presentation to board.** The executive administrator shall present the application to the board after completing the review pursuant to §375.38 of this title (relating to Review of Applications by Executive Administrator), and shall include comments concerning the best method of making financial assistance available. Upon the executive administrator's finding that the application is complete and in order for board review, the application shall be placed on the following month's agenda for board

consideration. The applicant and other interested parties known to the board shall be notified of the time and place of such meeting. Evidence and arguments both for and against the granting of the application may be heard at such meeting.

(b) **Action by board.** At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. The board shall approve an application only if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal Act and state law. If the board commits itself to participation in the project, such commitment for financial assistance shall expire 270 days after the board's action making the commitment, unless another period of time for expiration of the commitment is extended by the board. Any extension must be requested of the board by application filed with the executive administrator. Prior to referring such request to the board for consideration, the executive administrator may require the refiling of, or updating of information contained in the original application. After such information is provided, the staff will refer the request to the board along with its recommendation. Notice of the time and place of board consideration will be given to the applicant's authorized representative.

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 November 9, 1987.

TRD-8710117 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Earliest possible date of adoption:

December 21, 1987

For further information, please call
(512) 463-8489.



Program Requirements

★ 31 TAC §§375.11-375.21

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.11. Eligibility Determination. To be eligible for financial assistance, an applicant must be designated a waste treatment management agency under the Act, §208 and §303e.

§375.12. Obligation Period. Funds allotted to the state shall be available for obligation for a period of one year after the close

of the federal fiscal year for which the funds are authorized.

§375.13. Reserves. The board shall reserve a percentage of the state's allotment from each federal fiscal year for administration of the fund and for planning under the Act, §205(j) and §205(j)(5). The reserve for nonpoint source pollution planning is applicable only for funds appropriated under the Act, Title II.

§375.14. Public Hearings. In accordance with the Act, the board shall hold public hearings to consider adoption and approval of the annual intended use plan and the priority list and amendments thereto when required.

§375.15. Types of Assistance. The fund may be used for the following purposes:

(1) to make loans on the condition that:

(A) such loans are made at or below market interest rates, including interest free loans at terms not to exceed 20 years;

(B) annual principal and interest payments will commence not later than one year after completion on any project and all loans will be fully amortized not later than 20 years after project completion; and

(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;

(2) to buy or refinance the debt obligation of eligible applicants within the state at or below market rates, when such debt obligations were incurred after March 7, 1985; and

(3) for the reasonable costs of administering the fund and conducting activities under the Act, Title VI.

§375.16. Capitalization Grant Application. After the board approves the intended use plan and priority list, the executive administrator shall submit these items with an application for the capitalization grant for that fiscal year to EPA.

§375.17. Capitalization Grant Requirements. All projects which receive loan assistance from the fund and will be constructed in whole or in part before fiscal year 1995 with funds directly made available by capitalization grants must meet the requirement under the Act, §§201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513. If possible, capitalization grant funds will be committed before any other available funds in the SRF are used. A brief description of the federal statutory requirements are as follows.

(1) Section 201(b) requires that projects apply best practicable waste treatment technology.

(2) Section 201(g)(1) limits assistance to projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infil-

tration-inflow correction.

(3) Section 201(g)(2) requires that alternative waste treatment techniques be considered in project design.

(4) Section 201(g)(3) requires the applicant to show that the related sewage collection system is not subject to excessive infiltration.

(5) Section 201(g)(5) requires that the applicant study innovative and alternative treatment technologies and take into account opportunities to make more efficient use of energy and resources.

(6) Section 201(g)(6) requires that the applicant analyze the potential recreation and open space opportunities in the planning of the proposed facility.

(7) Section 201(n)(1) provides that funds under §205 may be used to address water quality problems due to discharges of combined storm water and sanitary sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a state. This provision is intended to apply to use of funds under Title VI as well as §205.

(8) Section 201(o) requires that communities develop a capital financing plan.

(9) Section 204(a)(1) and (2) requires that treatment work projects be included in plans developed under §208 and §303(e).

(10) Section 204(b)(1) requires communities to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works.

(11) Section 204(d)(2) requires that one year after the date of construction, the owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit.

(12) Section 211 provides that collectors are not eligible unless the collector is needed to assure the total integrity of the treatment works or that adequate capacity exists at the facility.

(13) Section 218 assures that treatment systems are cost effective and requires that projects of over \$10 million include a value engineering review.

(14) Section 511(c)(1) applies the National Environmental Policy Act to treatment works projects.

(15) Section 513 applies the Davis-Bacon Act to treatment works projects.

§375.18. Project Priority List.

(a) SRF priority list. The project priority list is an ordered listing of projects anticipated to receive loans. All projects requesting loan assistance must be included on the state's project priority list. Loan assistance may be provided regardless of the rank on the state's project priority list.

(b) Projects included. To assure that all eligible entities have an opportunity to obtain loan assistance at the earliest possible time, the following projects will be listed on

the priority list:

- (1) all incorporated cities;
- (2) all special districts and counties which have wastewater treatment authority; and
- (3) river authorities which have wastewater treatment authority.

(c) Preparation and submission. The executive administrator may revise the project priority list in accordance with §375.14 of this title (relating to Public Hearings) as necessary to efficiently manage the fund. After the board adopts the final priority list, the executive administrator shall submit it to EPA.

(d) Effective period. A project priority list shall become effective and supercede all previous lists upon the date of EPA acceptance and shall remain effective until changed by the board.

(e) Population classes. The population classes shall consist of eligible projects with jurisdiction over a population of:

- (1) 3,500 or less, which class shall be designated "A";
- (2) 3,501 to 10,000, which class shall be designated "B";
- (3) 10,000 to 25,000, which class shall be designated "C";
- (4) 25,001 to 100,000, which class shall be designated "D";
- (5) 100,000 to 500,000, which class shall be designated "E"; or
- (6) 500,001 and above, which class shall be designated "F".

(f) Population. For the purposes of this chapter, population is that number of people who reside within the territorial boundaries of the applicant as determined by:

- (1) information in the engineering feasibility study or facility plan or latest official census for an incorporated city; or
- (2) the population for which the project is designed, where the applicant is not an incorporated city or town.

§375.19. *Rating Process.* The rating process is required by the Act to be designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of the Act. Since SRF assistance may be provided regardless of the rank of the project on the priority list, the rating and ranking process will mainly be used to rate and rank projects placed on the intended use plan.

(1) The criteria used to rate eligible projects and the maximum number of points assignable to each criterion shall be:

- (A) existing treatment facilities-200 points;
- (B) water quality impact-350 points;
- (C) treatment requirements-200 points; and
- (D) environmental nuisances-50 points.

(2) The executive administrator shall use one of the following rating sheets to rate each eligible project based upon the type of project to be rated:

(A) replacement wastewater treatment facilities (Rating Sheet Number 1);

(B) replacement interceptors/lift stations (Rating Sheet Number 2);

(C) new sewage systems (Rating Sheet Number 3);

(D) new interceptors/lift stations (Rating Sheet Number 4); and

(E) collection facilities (Rating Sheet Number 5).

(3) The tables used to compute the rating score for an eligible project shall be:

(A) Table I-impact on water uses of receiving streams;

(B) Table II-environmental nuisances;

(C) Table III-present flow estimate for septic tank communities;

(D) Table IV-environmental nuisance factor for relief interceptors;

(E) Table V-environmental nuisance factor for new interceptors and collection facilities; and

(F) Figure 1-population density point curve.

(4) Rating Sheet Number 1 shall be used to rate wastewater treatment facilities projects which will replace or improve existing facilities.

(A) The Rating Sheet Number 1 score for a project which replaces or improves two or more existing treatment facilities shall be based upon a weighted average of the parameters of the permits issued by the commission for the existing plants.

(B) Where the project's facility plan includes work in addition to the wastewater treatment facility work, the project will be rated on the rating sheet which shall include 50% or over of the total facility cost.

(C) Where the facility plan shows that it is cost effective to abandon the existing treatment facilities and to divert sewage to a different location, the diversion line shall have the rating score of the existing treatment facilities to be abandoned.

(D) Regardless of the Rating Sheet Number 1 score, a design or construction project applicant shall secure an appropriate waste discharge permit from the commission, if required, before a loan or other type of assistance may be closed.

(E) Where the waste discharge permit issued by the commission does not allow any discharge of sewage effluent into a stream, lines 4 and 17 shall have a unit value of 1.

(5) Rating Sheet Number 2 shall be used to rate projects which involve the replacement or improvement of overloaded interceptor lines and interceptor lift stations, except where the lift stations are an integral part of a project rated under Rating Sheet Number 1. Because Rating Sheet Number 2 is used to rate projects which involve the replacement or improvement of interceptor lines or interceptor lift stations, but which do not include treatment facilities, the two

rating criteria, existing treatment facilities, and future treatment requirements shall each have a value of zero.

(6) Rating Sheet Number 3 shall be used to rate a sewage system project which will serve an entire community presently without sanitary sewer service, e.g., an entire community relying solely upon septic tank facilities. It shall not be used for new subdivisions, newly developed urban areas, existing communities with a sewage system, or new communities.

(A) The Rating Sheet Number 3 score shall be applicable to a wastewater treatment plant, interceptor, and collection system required to provide sanitary sewage service to the existing unserved community.

(B) For purposes of Part A in Rating Sheet Number 3, the biochemical oxygen demand concentration shall have the value of 80 and the total suspended solids concentration shall have the value of 1.

(C) Regardless of the Rating Sheet Number 3 score obtained, the applicant shall secure an appropriate waste discharge permit from the commission, if required, before a loan or other type of SRF assistance may be closed.

(7) Rating Sheet Number 4 shall be used to rate new interceptor lines, such as an interceptor to serve an unserved area of an existing community. Because Rating Sheet Number 4 is used to rate projects which involve new interceptor lines and new lift stations, but which do not include treatment facilities, the two rating criteria, existing treatment facilities, and future treatment requirements shall each have a value of zero.

(8) Rating Sheet Number 5 shall be used to rate projects which primarily involve improvements to an existing collection system or a new collection system project for an existing unsewered area of a community. Because Rating Sheet Number 5 is used to rate collection system projects which do not include treatment facilities, the two rating criteria, existing treatment facilities, and future treatment requirements shall each have a value of zero.

(9) Rating Sheets 1-5, Tables I-V, and Figure 1-population density point curve are found in §373.44 of this title (relating to Rating Sheets 1-5, Tables I-V, and Figure 1-Population Density Point Curve). Copies may be obtained from the board, Room 513, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711.

§375.20. *Intended Use Plan.*

(a) Each fiscal year after congress appropriates and the state receives its allocation of funds for the SRF, the board shall prepare an intended use plan which shall be subjected to a public hearing and approved by the board. The intended use plan will identify projects anticipated to receive loans from that year's appropriation. The intended use plan will include the following items:

(1) a description of both the short and long term goals and objectives of the

fund;

(2) a list of projects for construction of sewage facilities which are included on the priority list and a list of activities eligible for assistance under the Act, §319 and §320. The list of projects will include the following items:

- (A) name of the recipient;
 - (B) facility description;
 - (C) project element/use categories;
 - (D) treatment requirements, and
 - (E) terms of financial assistance;
- (3) assurances for meeting the requirements of the Act, §602(b).

(A) the board will enter into a binding commitment equal to 120% of the capitalization grant payments within one year after the receipt of the grant payment;

(B) all funds will be expended in an expeditious manner;

(C) all capitalization grant funds will first be used toward compliance with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988; and

(D) all projects funded with capitalization grant funds will meet the requirements under the Act §§201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513

(b) Also included in the intended use plan will be the criteria and method that are established for distribution of funds.

(1) The executive administrator shall begin preparing a preliminary intended use plan on the day that the federal Appropriation Act is signed into law. The entities to be considered for funding will be those legal entities that have indicated to the board that they desire to receive assistance within the next 12 months. The preliminary intended use plan will be subjected to a public hearing within 90 days after the federal Appropriation Act is signed into law.

(2) Each project to be included in the intended use plan shall be categorized according to population class and shall be rated under the rating process set out in §375.19 of this title (relating to Rating Process). The project rating score shall be based upon a facilities plan approved by the executive administrator. Projects which do not have an approved facilities plan will be rated using information furnished by the entity or information as listed in the current needs survey.

(3) The board approved intended use plan shall include only the eligible applicants which have committed in writing by the day of the public hearing to the following requirements.

(A) The entity will enter into a binding commitment with the board within one year of the date of approval of the capitalization grant award.

(B) The application for a loan from the SRF will be submitted within 90 days of approval of the intended use plan.

(C) The applicant will strictly

adhere to the project schedule negotiated with the board.

(D) All federal and state requirements will be met.

(E) After the 90-day application filing period set out in paragraph (5)(C) of this subsection, the board may add projects to the intended use plan as necessary to utilize available funds. Such projects must comply with all requirements applicable to projects listed on the board approved intended use plan.

(4) Projects will be ranked as follows.

(A) Each categorized project shall be ranked within its population class. A project having a score higher than that of another project in the same population class shall be ranked higher than such other project.

(B) Projects on the ready to proceed portion of the current priority list which have not been offered grant assistance shall be listed in priority order as the highest ranked projects in priority order on the intended use plan in the population categories.

(C) Projects which are to be re-financed shall be rated on facility conditions which existed prior to start of construction on their treatment works.

(D) Where two or more projects in the same population class have equal rating scores, such projects shall be ranked in order of the executive administrator's receipt of their written request to be included on the intended use plan.

(5) The apportionment of funds shall be as follows.

(A) After all reserve percentages are assigned, the board shall apportion the funds in the state's allotment among the population classes. Projects shall be listed with funds required and totaled by population class. Funds required for all population classes shall then be totaled. A percentage of the total funds required by each population class shall be computed. The portion of the state's allotment for funding projects shall be assigned to the population classes based on this computed percentage, however, no category shall be apportioned less than 5.0% of the funds.

(B) After population class percentages have been assigned and available funds distributed among the classes, a line will be drawn within each class according to funds available to each class. Projects wholly above the line and thus within the range of available funds shall be designated as projects to receive assistance. Projects not wholly above the line shall be eligible for assistance at such time funds become available.

(C) Applicants designated to receive assistance must submit an application to receive a loan from the SRF within 90 days of board approval of the intended use plan. If an application is received but is not approved within 90 days of board approval of the intended use plan, the executive ad-

ministrator may approve a priority ranking extension of no more than 30 days upon written request from the entity.

(D) All applicants which do not submit their applications within the required 90-day period, or any approved extension period, and any other projects which may become eligible for funding will be considered when an approved application is submitted on a first-come-first-served basis.

(E) Funds distributed to a population class shall be reserved for projects in that class for a period of 90 days after approval of the state's intended use plan. During the 90-day reservation period, applicants will be eligible for assistance solely on the basis of rank. A project with a higher rank will be eligible to be funded in entirety before a project of lower rank may receive assistance. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

(F) In the event the board is unable to provide assistance for an entire project in one fiscal year, the board may negotiate a multi-year commitment with the affected participant. A project so affected will receive the highest priority ranking in subsequent years. In the event that two or more projects require multi-year commitments, ranking in subsequent years will be based on the order in which the commitments were made (first in—first out).

§375.21. *SRF Financing.* The SRF has been established to assist and encourage communities to construct sewage facilities required to improve water quality and public health with low interest financial assistance. Types of assistance are itemized in §375.15 of this title (relating to Type of Assistance).

(1) The SRF may also be used to finance debt obligations. Such debt obligations must have been incurred after March 7, 1985, for the sole purpose of funding projects that meet the following requirements.

(A) The participant has been designated as a waste treatment management agency.

(B) The project has been identified and listed in the water quality management plan.

(C) The project must be listed on the state priority list.

(D) The project has complied with requirements as outlined in §375.17 of this title (relating to Capitalization Grant Requirements) and has been approved by the executive administrator.

(E) The project must have plans and specifications approved by the executive administrator and the commission.

(F) Any treatment works associated with the project must have a valid waste discharge permit issued by the commission.

(G) The project must have an operation and maintenance manual approved by the board.

(H) The project must comply

with the Davis-Bacon Act wage rate requirements.

(2) All communities requesting assistance shall meet the following requirements.

(A) The participant must enter into legal and binding commitments with the board to secure financing.

(B) Terms of any SRF assistance may not exceed 20 years.

(C) The participant must complete an application.

(D) The participant must comply with the requirements of the Water Quality Act of 1987 and all applicable state laws, requirements, and rules.

(E) The participant must establish a dedicated source of funds for repayment of the loan.

(3) Payments from the fund shall be made on a lump sum basis or monthly as construction is progressing. Funds will not be disbursed from the construction fund without prior board approval.

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

Issued in Austin, Texas, on November 9, 1987.

TRD-8710119 Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Earliest possible date of adoption:

December 21, 1987

For further information, please call
(512) 463-8489.

Application for Assistance

*31 TAC §§375.31-375.38

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.31. *Preplanning and Preapplication Conferences.*

(a) Preplanning conferences. Potential applicants shall confer with the board's staff as early in its planning process as practical. During the conference the executive administrator will provide information, advice, instruction, and guidance on the scope of work and level of effort needed to define eligible projects in order to ensure that the applicant expeditiously complies with the environmental and facilities planning requirements dictated by the Act, and with the water conservation requirements of the state statutes. Guidance on the scope of the required environmental information, facilities planning, and on water conservation planning requirements will also be given at the conference. Potential applicants should contact the executive administrator to arrange meetings and allow at least five working days for preparation.

(b) Preapplication conference. An applicant seeking financial assistance will make an appointment with the staff of the board. At a minimum, the preapplication conference should be attended by a member of the governing body of the political subdivision, the entity's engineer, and fiscal representative. If possible the applicant should bring information documenting the existence of a dedicated source of revenue for repaying the loan. The primary purpose of the meeting is to acquaint the applicant with program requirements and to assist the applicant in preparing an application. Also, a determination if the project qualifies for funding will in most cases be made at this meeting.

§375.32. *Required General Information.* Three copies of an application shall be filed with the board. The following information is required on all applications to the board for financial assistance:

(1) names, titles, and addresses for the applicant;

(2) names, titles, and addresses for the authorized official, correspondent, or representative for the applicant and each participating political subdivision;

(3) names, titles, and addresses for the principal officers, including the managing official of the applicant and each participating political subdivision;

(4) names, titles, and addresses for the project engineer;

(5) names, titles, and addresses for the legal counsel for the applicant. In an application for financial assistance which envisions a contractual loan agreement or the purchase of the applicant's bonds by the board, the name and address of bond counsel is also required (if other than legal counsel) and the name and address of the financial advisor or consultant;

(6) the authority of law under which the applicant was created;

(7) a brief description of the project including, but not limited to, the following:

(A) location;

(B) a comprehensive statement clearly demonstrating the project need and timing of need in sufficient detail to support and justify the project; and

(C) the total estimated cost of the project certified by the engineer;

(8) source of funds and other information on the basis of which the board can determine whether the state will recover its investment;

(9) status of any proceedings to obtain a permit or other authorization from the commission or any other state or federal agency; and

(10) required general information regarding any existing water conservation program, including, but not limited to, the following:

(A) education and information programs;

(B) plumbing code standards for water conservation in new construction;

(C) retrofit programs to improve water use efficiency in existing buildings;

(D) conservation-oriented water rate structures;

(E) universal metering and meter repair and replacement;

(F) leak detection and repair;

(G) drought contingency plans;

(H) ordinances and emergency procedures;

(I) water recycling and reuse; and

(J) water conserving landscaping.

§375.33. *Required Fiscal Data.* The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction.

(1) The following information is to be furnished when the applicant proposes to enter into a contractual loan agreement or to sell bonds to finance the project, whether the purchasers are to be the board or others than the board:

(A) a citation of statutory authority for issuance;

(B) type of bonds (i.e., general obligation, revenue, or combination). If revenues are to be pledged, state the source and nature of such revenue;

(C) amount of the issue;

(D) full name of issue(s);

(E) approximate date of issue(s);

(F) proposed maturities; and

(G) details of option for prior payments.

(2) The applicant shall submit the amount and source of any funds to be expended on the project.

(3) If the applicant is authorized by law to levy and collect ad valorem taxes, give the following information.

(A) If such right and power have been exercised, give the following information for each of the five preceding years:

(i) the assessed valuation of taxable property;

(ii) the ratio of assessed valuation to actual market value in a specified year;

(iii) the maximum tax rate permitted by law per \$100 of assessed valuation;

(iv) the aggregate rate of all taxes levied and aggregate amount in dollars of taxes collected;

(v) the total amount in dollars of taxes collected; and

(vi) the distribution of tax rate as between interest and sinking fund and other purposes.

(B) If the applicant is newly created, or if it has never exercised its taxing power, give the following information:

(i) the assessed valuation of taxable property if valuations have been established, and if not, the estimated total amount of the assessed valuation taxable

property. Indicate whether the figure represents actual valuation or an estimate; and

(ii) the maximum tax rate permitted by law per \$100 of assessed valuation.

(4) The applicant shall give details of any limitation governing amount of bonded or general obligation debt which the applicant may incur.

(5) If the applicant has bonds outstanding which are payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(A) a complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options;

(B) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements; and

(C) a direct and overlapping debt statement.

(6) If the financing of the project will involve entering into a contractual loan agreement or sale of bonds or other securities payable wholly or in part from ad valorem taxes, the following information shall be submitted:

(A) a schedule of proposed future maturities of principal and interest of proposed bonds plus total maturities of any outstanding bonds from subsection (f) of this section; and

(B) the rate of interest assumed in computing future interest maturities on proposed bonds.

(7) If the project for which the SRF loan is desired is for the purpose of extending, enlarging, or improving an existing system or facility, the following shall be submitted for each of the five preceding years to the extent available:

(A) a comparative operating statement;

(B) a schedule of water and sewer rates or service charges; and

(C) the number of customers or patrons of the system.

(8) The applicant shall provide a schedule of proposed rates required for financing the project under consideration.

(9) If the applicant has bonds outstanding which are payable either wholly or in part from net revenues of a system or facility in connection with which the current project is planned, the following information shall be submitted:

(A) a complete description of each such issues of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options; and

(B) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements.

(10) If the financing of the project will require entering into a loan agreement or require the sale of bonds or other secur-

ities payable either wholly or in part from net revenues of one or more facilities or systems, the following information shall be submitted:

(A) a schedule of proposed future bonds plus total maturities of any outstanding bonds referred to in subparagraph (9)(B) of this subsection; and

(B) the rate of interest assumed in computing future interest requirements on proposed bonds.

(11) The applicant shall provide a statement as to whether or not there has been a default in the payment of items of matured principal or interest and if so, give details.

(12) The applicant shall provide an annual audit of financial report prepared by an independent auditor as of the close of the preceding fiscal year, however, no audit is required if the applicant has no operation history.

(13) Where the project envisions either contractual loan agreement or the sale of revenue bonds, a schedule of the project engineer's estimate of future income and expense, showing the estimated amount of net revenue to accrue in each year during the life of any bonds to be issued.

§375.34. Required Legal Data.

(a) Bond election results. If a bond election is required by law to authorize the issuance of bonds to finance the project, such election should be held prior to consideration of the application by the board. The applicant shall provide the executive administrator with the election date and election results as to each proposition submitted.

(b) Resolution. The applicant shall submit a certified copy of a resolution of its governing body requesting financial assistance from the board, authorizing the submission of the application, designating the authorized representative for executing the application, and appearance before the board.

(c) Interlocal contracts. The applicant shall submit a copy of any actual or proposed interlocal contract under which any portion of the applicant's sewer capacity is utilized by another municipal entity. Before a loan is closed, a certified copy of such contract shall be required.

(d) Other contracts. If financing of the project will require a contractual loan agreement or the sale of bonds to the board payable either wholly or in part from revenues of contracts with others, the applicant shall submit a copy of any actual or proposed contracts under which the applicant's gross income is expected to accrue. Before a loan is closed, an applicant shall submit certified copies of such contracts to the executive administrator.

(e) Draft ordinance. The applicant shall submit a pro forma draft of an ordinance, resolution, or similar instrument to be adopted by the governing body authorizing a contractual loan agreement or the issuance of each of the bond issues described in §375.33(f) and (g) of this title (relating to

Required Fiscal Data). Such ordinance, resolution, or similar instrument shall contain, in addition to the usual provisions, sections providing:

(1) that a construction fund shall be created which shall be separate from all other funds of the applicant. If operating revenues are to be used to retire the debt, the loan recipient may establish a restricted asset account within the appropriate enterprise fund instead of creating a separate construction fund. The board rules applicable to construction funds also apply to restricted asset accounts;

(2) that project accounts for the construction fund shall be maintained in accordance with standards set forth by the Governmental Accounting Standards Board. The construction fund shall be established at an official depository of the applicant and all funds in the construction fund shall be secured in the manner provided by law for the security of county funds or city funds, as appropriate. If the applicant is not required by law to maintain its funds in an official depository, then it shall designate a depository with the approval of the executive administrator and shall maintain the construction fund in such depository and require that funds therein be secured in the manner provided by law for county funds. All proceeds from the sale of bonds to the board and all other proceeds acquired by the loan recipient to plan and construct the project shall be placed in the construction fund. All proceeds in the construction fund shall be used for the sole purpose of planning and building the project as approved by the board except as otherwise stated in these sections or approved by the board;

(3) that a final accounting be made to the board of the total cost of the project upon completion of the project performance certification. Such resolution or ordinance shall also provide that if the project be finally completed at a total cost less than the amount of available funds for building the project, or if the executive administrator disapproves construction of any portion of the project as not being in accordance with the plans and specifications, the applicant shall immediately, with filing the final accounting, return to the board the amount of any such excess and/or the cost as determined by the executive administrator relating to the parts of the project not built in accordance with the plans and specifications, to the nearest multiple of \$1,000 or \$5,000, depending upon the denomination of the bonds being sold. Thereupon, the board shall cancel and deliver to the applicant a like amount of the bonds of the applicant held by the board in inverse numerical order. Any returned funds will be deposited in the SRF. Unless otherwise stated in the loan commitment, in determining the amount of available funds for building the project, the applicant shall account for all monies in the construction fund, including all loan funds extended by the board, all other funds available

from the project as described in the project engineer's or fiscal representative's sufficiency of funds statement required for closing the board's loan and all interest earned by the applicant on money in the construction fund. This requirement shall not be interpreted as prohibiting the board from enforcing such other rights as it may have under law;

(4) that an annual audit of the applicant, prepared by a certified public accountant or licensed public accountant be provided to the executive administrator;

(5) that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;

(6) that the applicant will implement any water conservation program required by the board until all financial obligations to the state have been discharged;

(7) that the applicant will comply with any special conditions specified by the board's environmental determination until all financial obligations to the state have been discharged; and

(8) that the applicant covenants to abide by the board's rules and relevant state statutes.

(f) Affidavit. The applicant shall submit an affidavit executed by the authorized representative stating that the facts contained in the application are true and correct to his best knowledge and belief.

(g) Construction contract. The applicant shall submit a copy of any existing or proposed construction contract.

(1) All proposed contracts shall have provisions assuring compliance with the board's rules and all relevant statutes.

(2) The applicant shall be represented by a registered professional engineer who shall inspect the project at each phase of construction to assure construction in substantial compliance with the plans and specifications and in accordance with sound engineering principles and the terms and provisions of the construction contracts.

(3) The applicant shall submit such other provisions as may be deemed necessary to provide the board and the applicant adequate control to ensure that materials furnished or work performed conform with the provisions of the construction contracts.

(h) Consultant contracts. The applicant shall submit copies of any proposed or existing contracts for consultant services necessary for construction of the proposed project and included as part of the total cost of the project.

(i) Compliance with state law. The applicant shall submit a certification by the authorized representative of the applicant in a form acceptable to the board which warrants compliance by the applicant with all representations in the application, all laws of the State of Texas and all rules and published policies of the board.

(j) Ordinance for prior lien bonds. If

bonds to be sold to the board are revenue bonds secured by a subordinate lien, then a copy of the authorizing instrument of the governing body in the issuance of the prior lien bonds shall be furnished.

(k) Other information. The applicant shall submit other information, plans, and specifications requested by the board or the executive administrator which are reasonably necessary for an adequate understanding of the project. The applicant shall submit a copy of any proposed or existing lease or other agreement transferring interests in any land acquired, or to be acquired, with assistance SRF. Regardless of the source of funds in the acquisition, the applicant shall:

(1) describe what real property interests and acquisitions are necessary for the construction of the projects;

(2) explain the status and means of obtaining the property interests, and

(3) provide a certification that it has the necessary legal powers and authority to obtain the necessary interests.

§375.35. Required Environmental Review and Determinations.

(a) General. As required by the provisions of the Act, §602(b)(6), the board will conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the SRF. This review will insure that the project will comply with the applicable local, state, and federal laws, and board rules relating to the protection and enhancement of the environment. Based upon the staff's review, the executive administrator will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of the provision of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in these sections shall prohibit any public, private, or governmental party from seeking administrative or legal relief from the determinations of the board. Potential applicants to the fund should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) Basic environmental determinations. There are three basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID); and a determination to provide or not provide financial assistance based upon a record of decision (ROD) following the preparation of an environmental impact statement (EIS).

The appropriate determination will be based on the following criteria.

(A) The categorical exclusion (CE) determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.

(i) Projects which meet the following criteria may be categorically excluded from formal environmental review requirements.

(I) The project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites.

(II) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(iii) CE's will not be granted for projects that entail:

(1) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population 30% or greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

(VI) the construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(iii) The board may exclude, by amendment to these sections, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with guidance developed by the board. Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a CE or EIS will be required to prepare an EID. The executive administrator's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The ROD may only be based

upon an EIS in conformance with the format and guidelines described in subsection (b)(3) of this section. An EIS will be required when the executive administrator determines any of the following:

(i) the project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of the project's construction or operation will conflict with local or state laws or policies;

(iii) the project may have significant adverse impacts upon:

(I) wetlands;

(II) floodplains;

(III) threatened and endangered species or their habitats;

(IV) cultural resources including parklands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(iv) the project will displace population or significantly alter the characteristics of existing residential areas;

(v) the project may directly or indirectly (e.g., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife, or their natural habitats;

(vi) the project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) Other determinations that are required of the board.

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the executive administrator will provide that, prior to approval, the plans and specifications, loan application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the executive administrator may revoke a CE and require the preparation of an EID or an EIS, consistent with the criteria of subsection (a)(1) of this section, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the executive administrator will:

(i) reaffirm the original environmental determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI for a project for which a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public

notice that the preparation of an EIS will be required; or

(iv) issue a supplement to a ROD, or revoke an ROD and issue a public notice that financial assistance will not be provided.

(B) When five or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the executive administrator will re-evaluate the project, environmental conditions and public views, and prior to approval of the application, proceed in accordance with subparagraph (A) of this paragraph.

(3) Other determinations that are available to the board.

(A) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

(i) immediately remedy a severe public health, water quality, or environmental problem;

(ii) not preclude any reasonable alternatives identified for the complete system;

(iii) not cause significant direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and

(iv) not be highly controversial.

(B) Based upon the review of the information required by subsection (b) of this section, the executive administrator will issue a FNSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(b) Environmental information required by the board. A minimum of three copies of all information required in this subsection shall be submitted to the board.

(1) Applicants seeking a CE will provide the board with sufficient documentation to demonstrate compliance with the criteria of subsection (a)(1) of this section. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs;

(B) a statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and

(C) a plan map or maps of the proposed project showing:

(i) the location of all construction areas;

(ii) the planning area boundaries; and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects

do not meet the criteria for a CE and for which the executive administrator has made a preliminary determination that an EIS will not be required. The executive administrator will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of facilities planning.

(A) At a minimum, the contents of an EID will include:

(i) the purpose and need for the project;

(ii) the environmental setting of the project and the future of the environment without the project;

(iii) the alternatives to the project as proposed and their potential environmental impacts;

(iv) a description of the proposed project;

(v) the potential environmental impacts of the project as proposed including those which cannot be avoided;

(vi) the relationship between the short term uses of man's environment and the maintenance and enhancement of long term productivity;

(vii) any irreversible and irretrievable commitments of resources to the proposed project;

(viii) a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and

(ix) documentation of coordination with appropriate governmental agencies.

(B) Prior to the applicant's adoption of the facilities plan, the applicant will hold a public hearing on the proposed project and the EID, and provide the executive administrator with a verbatim transcript of the hearing. The executive administrator will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least 30 days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attendees, any written testimony, and the applicant's responses to the issues raised.

(C) The applicant will provide copies of the EID to all federal, state, and local agencies and others with an interest in the project. The executive administrator will provide guidance to the applicant regarding coordination requirements.

(3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic, and social impacts. The following format must be

followed by the applicant unless the executive administrator determines there are compelling reasons to do otherwise:

(A) a cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested, and the date of publication;

(B) an executive summary consisting of a 10 to 15 page precis of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

(i) a description of the existing problem;

(ii) a description of each alternative;

(iii) a listing of each alternative's potential environmental impacts, mitigative measures, and any areas of controversy; and

(iv) any major conclusions;

(C) the body of the EIS, which will contain the following information:

(i) a complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives;

(ii) a balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;

(iii) a description of the alternatives available to the board including:

(I) providing financial assistance to the proposed project;

(II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) not providing financial assistance;

(iv) a description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise effect or have an interest in any of the alternatives;

(v) a description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use, and cultural resources of the facilities planning area. The board will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the

total impacts of each alternative in manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.

(4) The draft EIS will be provided to all local, state, and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commentors will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The board will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(5) Material incorporated into an EIS by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in subsections (b)(3)(D) and (b)(3)(G)(iv) of this section.

(6) When an EIS is prepared by contractors, either in the service of the applicant or the board, the board will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(7) The public participation required for an EIS is extensive; but should, depending upon the nature and scope of the proposed project, be supplemented by the applicant. The following requirements represent the minimum allowable to the applicant and the board.

(A) Upon making the determination that an EIS will be required of a proposed project, the board will publish in the *Texas Register* and distribute a notice of intent to prepare an EIS.

(B) As soon as possible after the notice of intent has been issued, the board will convene a meeting of the affected federal, state and local agencies, the applicant,

and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared as in paragraph (b)(2)(B) of this subsection except that in no case will the notification period be less than 45 days. As part of the scoping meeting the board will, at a minimum:

(i) determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

(ii) identify the preliminary range of alternatives to be considered;

(iii) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) discuss the method for EIS preparation and the public participation strategy;

(v) identify consultation requirements of other laws and regulations;

(vi) determine the relationship between the preparation of the EIS and the completion of the facilities plan and any necessary arrangements for coordination of the preparation of both documents.

(C) Following the scoping process the executive administrator will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this including a list of the significant issues identified will be provided to the applicant and other interested parties. Preparation of the EIS will be done, at the discretion of the board: directly, by its own staff; by consultants to the board; or by a consultant, contracted by the applicant subject to approval by the board. In the latter two cases, the consultant will be required to execute a disclosure statement prepared by the board signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of paragraph (b)(2)(B), of this subsection except that the advertisement and comment period for the public participation will be no less than 45 days. The board will publish, in the *Texas Register* and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least 45 days prior to making any environmental determination.

(c) Environmental review by the board.

(1) When the executive administrator has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a CE is to be rescinded, the executive administrator will prepare a public notice of the determination to categorically exclude the project and the availability

of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The board, concurrent with the publication, will distribute the notice to all interested parties.

(2) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the executive administrator to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the executive administrator may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the executive administrator will prepare an EA, describing:

(A) the purpose and need for the proposed project;

(B) the proposed project, including its costs;

(C) the alternatives considered and the reasons for their rejection or acceptance;

(D) the existing environment;

(E) any potential adverse impacts and mitigative measures; and

(F) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(3) Based upon this EA, the executive administrator will issue a FNSI or issue a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the board. The EA will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the board for at least 30 days after the issuance of the FNSI.

(4) Following the comment period and public hearings on the final EIS and at the time of the decision to approve the facilities plan or to provide or deny financial assistance to the proposed project, the executive administrator will prepare a concise public ROD. The ROD will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(5) In accordance with subsection (a)(2)(A), (a)(2)(B) and (a)(3) of this section, the board will conduct environmental reviews and issue public notices or amended

determinations, as appropriate.

§375.36. *Facilities Planning Report.*

(a) Preapplication conference. As early as practical, pursuant to §375.31 of this title (relating to Preplanning and Preapplication Conferences), the applicant's engineers and appropriate staff shall meet with the board's staff to obtain current planning information, and obtain guidance on the scope of the facilities planning report, and to get an early determination under §375.35 of this title (relating to Required Environmental Review and Determinations). The applicant shall utilize the guidance provided by the board's staff to the maximum extent feasible. The applicant shall submit three copies of its facilities planning report.

(b) Contents of facilities plan. Pursuant to the Act, §602(b)(6), the facilities plan shall contain the following information:

(1) identification of the planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems for the next 20 or more years, accounting for water conservation options;

(2) demonstration that each sewer collection system is not or will not be subject to excessive infiltration;

(3) systematic identification, screening, study, evaluation, and cost-effectiveness analysis of conventional (BPWTT) technologies, as well as innovative, and alternative technologies, processes, and techniques. Innovative and alternative technologies options are to include, as appropriate, the ultimate disposal of residues and sludge, revenue producing facilities and allowing, to the extent practicable, the more efficient use of energy and resources;

(4) adequate evaluation of the environmental impacts of alternatives in accordance with §375.35 of this title (relating to Required Environmental Review and Determination) to support the cost-effectiveness analysis;

(5) description of the proposed project in terms of quantities in each category of work, capital costs, and operation and maintenance costs;

(6) if collection lines are included, establishment of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the waste treatment works servicing the community, or they are for a new collection system in an existing community with sufficient existing or planned wastewater treatment capacity;

(7) documentation on the project's consistency with the approved elements of any applicable water quality management plan approved under the Act, §208 or §303(e);

(8) complete analysis and description of the proposed or existing user charge

system which will proportionately distribute operation and maintenance and replacement costs to each user or user class (system may allow subsidizing of low-income residential user as defined by the board when adopted after public notice and hearing);

(9) a capital financing plan including a projection of future (through 10 or more years) needs for construction and reconstruction and an explanation of how and when the financing will be obtained;

(10) the preliminary engineering design data specified in §317.1(b) of this title (relating to Design Criteria for Sewerage Systems);

(11) a description of the water conservation plan if existing or required by §375.37(d) of this title (relating to Required Water Conservation Plan) in terms of public education, building codes, rate structures, leak detection, reuse, enforcement, and emergency/drought contingency plans;

(12) an analysis of potential recreation and open space opportunities for the proposed project;

(13) a valid schedule for implementation of the project, covering design through construction including the date by which an application can be submitted to the board and a payment schedule; and

(14) other information deemed necessary by the executive administrator.

(c) Approval of facilities plan. The executive administrator will approve the facilities plan after conforming that the appropriate environmental determinations have been completed in accordance with §375.35(e) of this title (relating to Required Environmental Review and Determinations) and the loan recipient has agreed to incorporate all mitigating measures directed by the executive administrator.

(d) Partial funding. In the event financial assistance is required by the applicant to complete detailed planning required in subsection (b) of this section, the board may approve the application and authorize partial funding subject to all requirements being met and approved by the executive administrator before the loan closing.

§375.37. *Required Water Conservation Plan.*

(a) The applicant, if not eligible for an exemption, shall submit either with its application or separately under subsection (b) of this section, two copies of a water conservation plan for approval. Before the application is filed, all applicants shall discuss the scope and content of the plan with members of the board's staff who are responsible for reviewing the water conservation plan. At the applicant's request, the executive administrator may provide educational material and, to the extent staff personnel are available, may provide technical assistance in developing a comprehensive water conservation plan that is designed to meet existing and anticipated local needs and conditions. The executive administrator

shall review all water conservation plans submitted as part of an application for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.

(b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modifications the applicant's water conservation plan during an open meeting. The board may revise the amount and conditions of its financial commitment after considering the water conservation plan.

(c) The long-term water conservation plan required under subsections (a) or (b) of this section shall be consistent with the guidelines for water conservation planning available from the executive administrator. The plan shall serve as the basis for developing and implementing a conservation program. At a minimum, the plan shall consider, and as appropriate include, each of the elements in §375.32(10) of this title (relating to Required General Information). Reasons for not including any of the elements stated in §375.32(10) of this title (relating to Required General Information) shall be clearly stated. The plan shall effectively address the following:

- (1) need for the goals of a water conservation program;
- (2) methods to reduce water consumption;
- (3) methods to reduce the loss or waste of water;
- (4) methods to improve efficiency in use of water; and
- (5) methods to increase the recycling and reuse of water.

(d) The board may not require an applicant to provide a water conservation plan if the board determines an emergency exists, the amount of financial assistance to be provided is \$500,000 or less, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation.

(1) An emergency exists when:

(A) wastewater system has already failed, causing the health and safety of the citizens served to be endangered;

(B) sudden, unforeseen demands are placed on a wastewater system (i.e., because of military operations or emergency population relocation);

(C) a disaster has been declared by the governor or president; or

(D) the Governor's Division of Emergency Management of the Texas

Department of Public Safety has determined that an emergency exists.

(2) The board shall review an application for which an emergency is determined to exist six months after the board commits to financial assistance, and also at the time of any extensions of the loan commitment. If the board finds that the emergency no longer exists, it may then require submission of a water conservation plan satisfactory to the board, before making any further disbursements on the commitments.

(3) Submission of a plan is not necessary to facilitate water conservation if the applicant already has a program in effect that meets the requirements of subsection (a) of this section and of §375.72(a)(11) of this title (relating to Loan Closing).

§375.38. Review of Applications by the Executive Administrator.

(a) Review criteria for loans. The executive administrator shall review the application for funds and present it to the board only after confirming the following.

(1) The project is consistent with and included on the project list in accordance with §375.18(a) of this title (relating to Priority Project List).

(2) The applicant has satisfactorily completed a facility planning report in accordance with §375.36 of this chapter (relating to Facilities Planning Report).

(3) The project has been determined to be consistent with the area wide water quality management planning of the state.

(4) The categories of proposed work are eligible.

(5) The applicant has adopted or has agreed to adopt an acceptable user charge system.

(6) The applicant has adopted or agreed to adopt an adequate water conservation plan, unless the loan application amount is for less than \$500,000, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation or an emergency exists as determined by the executive administrator.

(7) The applicant has satisfactorily demonstrated it has the necessary legal, financial, and managerial capability to complete the project.

(8) The applicant has submitted an acceptable schedule for the initiation and completion of the project.

(9) The applicant is considered capable of repaying the loan under the terms of its commitment.

(b) Review criteria for refinancing. The executive administrator shall review an application for refinancing of construction costs and present it to the board only after confirming the following.

(1) All of the items in subsection (a) of this section have been confirmed.

(2) The plans and specifications

have been approved in accordance with §375.63 of this title (relating to Approval of Plans and Specifications).

(3) The executed contract documents have been submitted and approved, if available.

(4) An inspection and, if necessary, appraisal of any completed work has been performed and the findings demonstrate the project is consistent with the board's rules.

(5) Any other information, requested by the executive administrator has been provided.

(c) Return of incomplete application. The executive administrator shall return any application not in substantial compliance with these rules with notations showing deficiencies.

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 November 9, 1987.

TRD-8710118

Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Earliest possible date of adoption:

December 21, 1987

For further information, please call
(512) 463-8489.

Board Action on Application

★ 31 TAC §375.51

The new section is proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.51. Formal Action by the Board.

(a) Presentation to board. The executive administrator shall present the application to the board after completing the review pursuant to §375.38 of this title (relating to Review of Applications by Executive Administrator), and shall include comments concerning the best method of making financial assistance available. Upon the executive administrator's finding that the application is complete and in order for board review, the application shall be placed on the following month's agenda for board consideration. The applicant and other interested parties known to the board shall be notified of the time and place of such meeting. Evidence and arguments both for and against the granting of the application may be heard at such meeting.

(b) Action by board. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. The board shall approve an application only if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant

will be sufficient to meet all obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal Act and state law. If the board commits itself to participation in the project, such commitment for financial assistance shall expire 270 days after the board's action making the commitment, unless another period of time for expiration of the commitment is extended by the board. Any extension must be requested of the board by application filed with the executive administrator. Prior to referring such request to the board for consideration, the executive administrator may require the refiling of, or updating of information contained in the original application. After such information is provided, the staff will refer the request to the board along with its recommendation. Notice of the time and place of board consideration will be given to the applicant's authorized representative.

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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Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Earliest possible date of adoption:

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For further information, please call

(512) 463-8489.



Engineering Design

★31 TAC §§375.61-375.63

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.61. *Value Engineering.*

(a) Applicability. The applicant shall conduct value engineering, during the design of the project, if the estimated cost of building the treatment works is more than \$10 million.

(b) Guidance. The applicant shall utilize the board's guidance on the scope and performance of the value engineering analysis. Three copies of the associated value engineering reports shall be submitted to the executive administrator for review and approval.

§375.62. *Plans and Specifications.*

(a) Submittals. The applicant shall prepare plans and specifications and a final engineering design report on all significant elements of the project. These documents shall conform to the requirements detailed in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems). The plans and specifications shall incorporate the accepted recommendations of any value engineering performed in accordance with §375.61 of this title (relating to Value Engineering). Three copies of the documents shall be submitted to the executive administrator.

(b) Additional requirements. The plans and specifications shall contain the following:

(1) provisions assuring compliance with the board's rules and all relevant statutes;

(2) forms by which the performance and payment bonds will be provided;

(3) provisions requiring the successful contractor and subcontractors to pay all laborers and mechanics employed on the project not less than the prevailing wage rates, as determined by the United States secretary of labor, in accordance with the Davis-Bacon Act (40 United States Code §§276a-276a-7);

(4) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;

(5) provisions providing for the applicant to retain 10% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator in accordance with §375.86 of this title (relating to Retainage);

(6) provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;

(7) provisions giving authorized representatives of the board access to all such construction activities, books, records, documents, and other evidence of the contractor for the purpose of inspection, audit, and copying during normal business hours; and

(8) those conditions, specifications, and other provisions provided by or requested by the executive administrator.

§375.63. *Approval of Plans and Specifications.*

(a) Approval. The executive administrator will approve the plans and specifications if they:

(1) conform to the requirements listed in §375.62 of this title (relating to Plans and Specifications);

(2) are consistent with all relevant statutes, including the Water Code;

(3) pass a biddability, operability, and constructability review by the executive administrator; and

(4) are consistent with the facilities planning documents and environmental determinations required by §375.35(b) of this title (relating to Required Environmental Review and Determinations) and §375.36 of this title (relating to Facilities Planning Report).

(b) Advertisement for bids. The applicant shall obtain authorization from the executive administrator before advertising for bids on the project.

(c) Other approvals. The applicant shall obtain the approval of the plans and specifications from each state and federal agency having jurisdiction over the project. The executive administrator's approval of the plans and specifications does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

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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TRD-8710116

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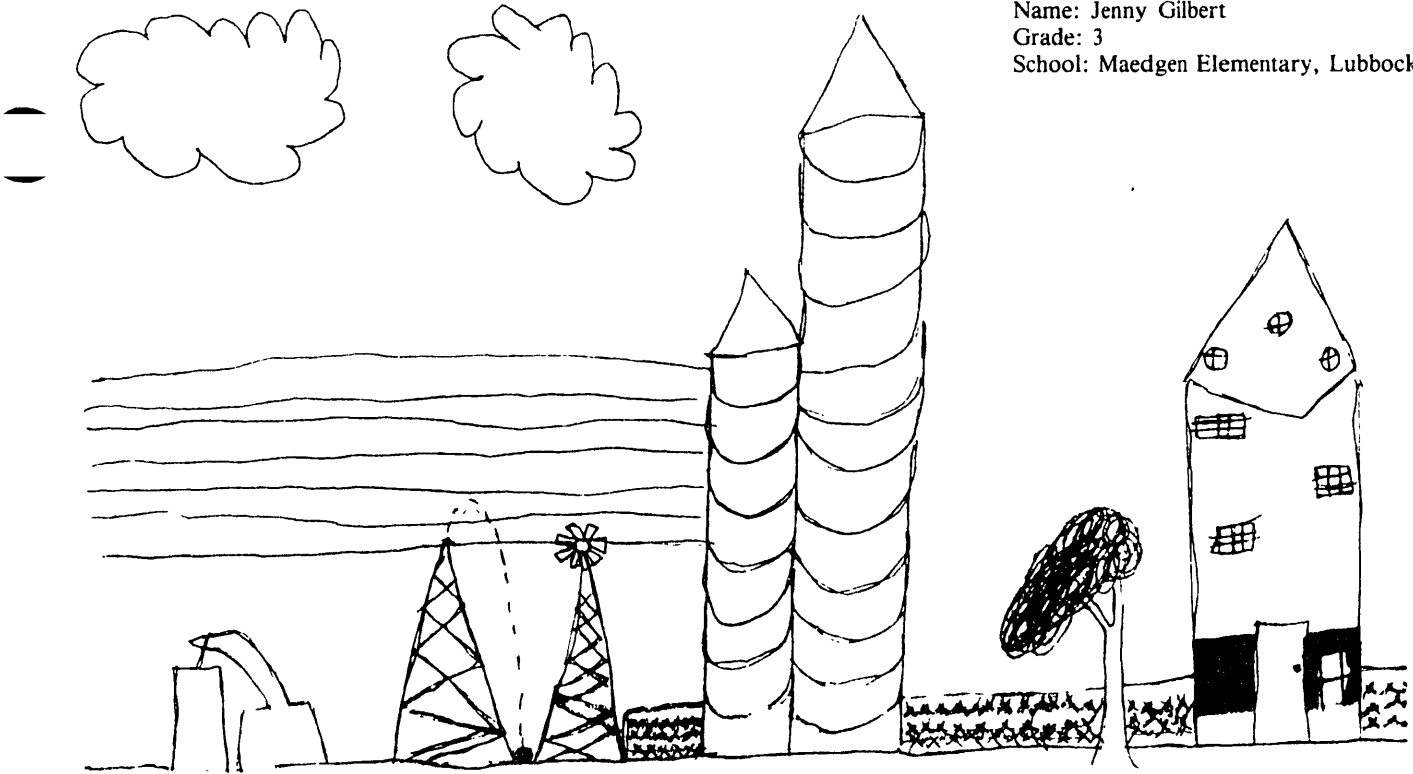
Earliest possible date of adoption:

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For further information, please call

(512) 463-8489.





Prerequisites to Release of Funds

★31 TAC §375.71, §375.72

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.71. Partial Release of Funds for Planning. The applicant shall make arrangements with the executive administrator and provide necessary documents as may be appropriate and consistent with special conditions established by the board and applicable federal requirements for partial transfer of funds from the fund to the applicant and for the delivery by the applicant of bonds or other contractual agreements, authorized and issued for the purpose of financing the project.

§375.72. Loan Closing.

(a) Submittals for loan closing. Prior to the closing of a loan for construction funds, the applicant shall submit for approval to the executive administrator the following documents:

(1) the plans and specifications approved in accordance with §375.63 of this title (relating to Approval of Plans and Specifications);

(2) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(3) two original copies of each con-

tingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, wage rates, and other documents required by §375.62 of this title (relating to Plans and Specifications);

(4) other or additional engineering data and information, if deemed necessary by the board's staff;

(5) a certification that all required acquisitions, leases, easements, right-of-way, relocations (both voluntary and involuntary) have been obtained for the project to be built;

(6) evidence that the applicant has obtained all required permits from the commission to build wastewater facilities or any other permit or approval that may be required by the commission;

(7) a statement as to sufficiency of funds, including proceeds to be derived for sale of bonds to the board and to others, and any other available funds to complete the project;

(8) a certified copy of an escrow agreement providing that funds for construction costs shall not be disbursed without board approval in accordance with §375.21 of this title (relating to SRF Financing). This escrow agreement may be waived by the board if the applicant provides some other form of binding commitment to obtain local approval before funds are disbursed;

(9) a certified copy of the bond transcript, including the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of bonds sold to the board containing the con-

venants as agreed upon or as may be required in the board's resolution. The board may require that bond resolutions and covenants reflect provisions consistent with the executive administrator's approved land acquisition procedures framed in the application and supporting documents. If not combined in the bond transcript, a certified copy of the ordinance, resolution, or similar instrument adopted by the governing body authorizing issuance of any other bonds to finance the balance of the cost of the projects;

(10) bonds delivered in proper form to the Office of the State Treasurer, Austin, or other place specified by the executive administrator, accompanied by written instructions for delivering the proceeds of the bonds, i.e., written instructions as to whom the state warrant shall be made payable and to whom it shall be delivered;

(11) two copies of the applicant's water conservation program, including documentation of local adoption:

(A) to the extent personnel are available, the executive administrator may provide technical assistance to an applicant in developing a comprehensive water conservation program that is consistent with the approved conservation plan. The water conservation program shall be developed according to criteria and guidelines for water conservation planning available from the executive administrator. The program shall consist of a long-term water conservation program and an emergency water demand management program;

(B) the long-term water conservation program may include:

(ii) education and information programs;

(iii) plumbing codes or ordinances for water conservation devices in new construction;

(iv) retrofit programs to improve water-use efficiency in existing buildings;

(v) conservation-oriented water rate structures;

(vi) universal metering and meter repair and replacement;

(vii) leak detection and repair;

(viii) water recycling and reuse;

(ix) water conserving landscaping, and

(x) means of implementation and enforcement.

(C) the emergency water demand management program shall, at a minimum, include drought contingency plans, and may include:

(i) education and information programs;

(ii) procedures for program initiation and termination, and emergency response; and

(iii) means of implementation and enforcement;

(12) unqualified approving opinions of the attorney general of Texas as to the legality of bonds sold to the board and also as to bonds sold to finance the balance of the project cost. On each of which opinions shall appear a certification from the comptroller of public accounts that such bonds have been registered in that office;

(13) unqualified approving opinion by a recognized bond attorney acceptable to the board as to the legality of bonds sold to the board and to others. Such attorney shall also furnish the board a transcript of bond proceedings relating to the bonds purchased by the board which shall contain those instruments normally furnished a purchaser of a bond issue, but the applicant need not duplicate any material previously supplied to the board;

(14) any of the instruments required by paragraphs (12) and (13) of this subsection which cannot be filed prior to delivery of the bonds and payment therefore shall be escrowed in an Austin bank under arrangements which permit their delivery to the board simultaneously with payment for the bonds;

(15) other such instruments or documents as the board may determine to be in the public interest and containing such terms and conditions as the resolution of conditional approval may require; and

(16) evidence that the applicant has obtained an environmental determination in accordance with §375.35 of this title (relating to Required Environmental Review and Determination).

(b) Refinancing construction loans. If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in subsection (a) of this section and

any records, assurances, or appraisals concerning the construction of the project. Additionally, the project must pass the executive administrator's inspection of the project.

(c) Completion of facilities planning submittals. If the project included a partial release of funds to complete detailed planning, the applicant must submit and gain approval by the executive administrator of the information required in §375.36(b) of this title (relating to Facilities Planning Report).

(d) Transfer of funds. Upon executive administrator's approval of the items detailed in subsection (a) of this section, or subsection (b) of this section if appropriate, the applicant shall make necessary arrangements with the executive administrator, consistent with established policy of the board applicable federal requirements and these sections, for actual transfer of funds from the fund to the applicant and the receipt from the applicant of those bonds, or other contractual agreement, theretofore authorized and issued for the purpose of financing the project.

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

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For further information, please call
(512) 463-8489

Building Phase

★ 31 TAC §§375.81-375.88

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.81. *Awarding Construction Contracts.* The applicant shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. The text of the construction contract shall not vary from the text of the executive administrator approved pro forma draft submitted by the loan recipient.

§375.82. *Inspection During Construction.* After the construction contract is awarded, the applicant shall provide for adequate inspection of the project by the project engineer and require his assurance that the work is being performed in a satisfactory manner in accordance with the

approved plans and specifications, approved alterations, and in accordance with sound engineering principles and building practices. The executive administrator is authorized to inspect the building of any project at any time in order to assure that plans and specifications are being followed and that the works are being built in accordance with sound engineering principles and building practices, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the applicant and the project engineer any variances from the approved plans and specifications. The applicant and the project engineer shall immediately initiate necessary corrective action.

§375.83. *Inspection of Materials.*

(a) The executive administrator is also authorized to inspect all materials furnished, including inspection of the preparation or manufacture of the materials to be used. A resident engineer or inspector may be stationed at the building site by the executive administrator to report on the manner and progress of the building or to report conditions relating to the materials furnished and the compliance by the contractor with approved plans and specifications for the project. Such inspection will not release the contractor from any obligation to perform the work in accordance with the requirements of the contract documents or the project engineer from determining compliance with the requirements of the contract documents.

(b) In the event building procedures or materials are determined by the executive administrator to be substandard or otherwise unsatisfactory and/or not in conformity with approved plans and specifications, the executive administrator may order the applicant to take such action through the project engineer in the manner provided for in the construction contract to correct any such deficiency.

(c) In those instances of dispute between the applicant project engineer and the executive administrator's representative as to whether material furnished or work performed conforms with the terms of the construction contract, the executive administrator may order the applicant to direct the project engineer to reject questionable materials and/or initiate other action provided for in the construction contract, including suspension where necessary, until all disputed issues are resolved in accordance with the terms of the construction contract.

(d) The contractor and applicant shall furnish the executive administrator's representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the contract.

(e) The executive administrator is authorized to conduct engineering and financial audits of every project which is financed in whole or in part by SRF funds. For pur-

poses of this section, the following definitions are applicable:

(1) Financial audit—A review of all the board's files for historical background for the project, a visit to the project offices or site to gather sufficient information to perform a detailed review of documents which substantiate the project expense, a tabulation of expenses, and issuance of an audit report to document the findings for the purpose of establishing that expenses financed from the fund are in conformance with terms and provisions of loan documents.

(2) Engineering audit—A physical inspection of the project to analyze and compare the project with the approved plans and specifications, resulting in the issuance of a technical report which itemizes any variances from the construction contract and approved plans and specifications and recommends corrective action.

(f) In addition to normal testing procedures required of the applicant, the executive administrator may require reasonable additional tests of building materials or processes which the executive administrator determines to be necessary during the building of projects financed in whole or in part by SRF funds. All tests, whether for the executive administrator or the project engineer, will conform to current American Water Works Association, American Association of State Highway and Transportation Officials, American Society of Testing and Materials, and Texas Department of Highways and Public Transportation published procedures, or similar criteria. The executive administrator shall specify which tests are applicable. Samples for testing shall be furnished free of cost to the executive administrator upon request on the construction site.

§375.84. *Alterations in Approved Plans and Specifications.* If after the executive administrator approves engineering plans and specifications it becomes apparent that changes in such plans and/or specifications are necessary or appropriate, a change order and justification therefore shall be submitted for approval, well in advance of the building alteration when possible. The executive administrator may approve and authorize a change, alteration, or variance in previously approved engineering plans and specifications, including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the plans and specifications, and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved plans and specifications which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved plans and specifications of the project, or

which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or property, tentative approval of change orders may be secured from the executive administrator via telephone and confirmed by letter or telegraph. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations, copies of the approved change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

§375.85. *Contractor Bankruptcy.* In the event of a contractor bankruptcy, any agreements entered into with the bonding company (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent) must be submitted for approval of the executive administrator. The applicant shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and re-awarding a construction contract.

§375.86. *Building Phase Submittals.* The following submittals and accompanying actions by the loan recipient will be required during the building phase of the project.

(1) Prior to placing the treatment works into operation, the applicant will adopt its user charge system and submit a copy of the enacted ordinance to the executive administrator. Further, the loan recipient will implement the user charge system for the useful life of the project.

(2) A final operation and maintenance manual will be submitted for the executive administrator's approval prior to placing the treatment works into operation.

(3) A complete set of as-built drawing will be submitted to the executive administrator upon completion of all construction.

(4) Notice of completion of construction will be submitted to the executive administrator upon completion of project construction.

(5) Any other building phase submittals required as part of the loan documents will be submitted for the executive administrator's approval.

§375.87. *Progress Payments.* Disbursements from the construction fund established by the applicant will require approval by the executive administrator. Certified requests for payment shall be submitted to the executive administrator monthly. Upon approval by the executive administrator, the

approved request will be forwarded to the depository in which the construction fund is maintained to authorize progress payments to be made from the fund.

§375.88. *Retainage.*

(a) Retainage withheld. Progress payments to the prime contractor should be for no more than 90% to the actual work completed at the time of the payment request.

(b) Partial release of retainage. If a project is substantially complete, a partial release of the 10% retainage may be made by the applicant with approval of the executive administrator.

(c) Final release. After completion of construction and acceptance by the applicant, the final release of retainage may be made with approval of the executive administrator.

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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(512) 463-8489.

Post Building Phase

★31 TAC §§375.101-375.103

The new sections are proposed under the Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its powers and duties.

§375.101. *Responsibilities of Applicant.* After the satisfactory completion of the project, the applicant shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is required. To facilitate such cooperation and to enable the board to protect the state's investment and the public interest, the following provisions shall be observed.

(1) The executive administrator is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the state's investment is being endangered, the executive administrator shall require the applicants to take corrective action.

(2) The executive administrator may request certified copies of all minutes, operating budgets, monthly operating

statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of the covenants of the bond indenture and/or the master agreement. The financial assistance provided by the board is based on the project's economic feasibility, and the board shares the applicant's desire to maintain this feasibility in the project's operation and maintenance at all times. The executive administrator shall periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the board requires in order to perform its duties and to protect the public interest.

(3) The applicant shall maintain debt service fund accounts and all other fund accounts related to the SRF debt in accordance with standards set forth by the Governmental Accounting Standards Board.

(4) Applicants with required water conservation programs shall report annually to the executive administrator on the implementation, status, public acceptance, and effectiveness of the water conservation programs until all of their financial obligations to the state have been discharged. The executive administrator may require an applicant which is not effectively implementing its conservation program to take corrective action. The executive administrator may refer further noncompliance by an applicant to the attorney general, or may take other corrective actions deemed appropriate to assure compliance.

(5) Applicants which were required to implement mitigative measures as a result of the environmental review process shall continue to comply with those measures.

§375.102. Project Performance Certification. On the date one year after the initiation of operation of the project, the applicant shall certify to the executive administrator whether the project meets the project performance standards. If the applicant cannot certify that the project meets the project performance standards, the applicant shall accomplish the following actions:

(1) identify the problem and propose corrective action;

(2) initiate corrective action in a timely manner which will enable an affirmative certification to be made; and

(3) submit an affirmative certification.

§375.103. Final Accounting. Upon completion of the project performance period, and after the applicant certifies that the facility is meeting the project performance standards, a final accounting will be made to the executive administrator in accordance with §375.34(e)(3) of this title (relating to Required Legal Data).

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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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter O. State Sales and Use Tax

★34 TAC §3.344

The Comptroller of Public Accounts proposes an amendment to §3.344, concerning telecommunications services. The amendment conforms with changes made to the Tax Code by the 70th Legislature, 1987. Long-distance telecommunication was redefined and many other services formerly subject to gross receipts tax are now subject to sales tax.

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 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 recognition in the administrative rules of new requirements of the sales tax code as amended. 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 Mona Ezell Shoemate, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

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

§3.344. Telecommunications Services.

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

(1) Basic local exchange telephone service—The provision by a telephone com-

pany of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services will be considered to be basic whether the customer has access to a private line or a party line or whether the customer has limited or unlimited access. It does not include [interstate or intrastate] long-distance telecommunication service.

(2) [Interstate] Long-distance telecommunication—A service which both originates from and is billed to a telephone number or billing or service address within [in this state but which is completed outside Texas or originates outside this state but is completed in] Texas.

(3) Intrastate long-distance telecommunication—A service which originates in this state and is completed in this state, but does not include service which originates and is completed in the same local exchange area.]

(3) Private line—A telephone circuit dedicated for use between specific locations.

(4) Seller—Any person selling telecommunications services including, but not limited to, a hotel, motel, owner or lessor of an office, residential building, or development that contracts and pays for telecommunications services for resale to guests or tenants.

(5)-(6) (No change.)

(7) Telephone company—A person who owns or operates a telephone line or [a] telephone [network] in this state[,] and charges for its use[, and is regulated by the Public Utility Commission as a certificated provider of local exchange telephone service].

(b) Services Taxable. Sales tax is due on a charge for the following:

(1) basic local exchange service.

(2)[(1)] enhanced services (metro service, extended area service, multiline hunting, PBX trunk, etc.). When a person selects enhanced service over basic local exchange service, the total charge becomes subject to sales tax;

(3)[(2)] auxiliary services (call waiting, call forwarding, etc.);

(4)[(3)] [intrastate] long-distance telecommunications services which are both originated from, and billed to, a telephone number or billing or service address within Texas; therefore, if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;

(5)[(4)] paging and mobile telephone services;

(6)[(5)] [intrastate] telegraph services which are both originated from, and billed to, a person within Texas;

(7)[(6)] a taxable service paid for by the insertion of coins or tokens into a coin-operated telephone [if provided by a person other than a telephone company];

(8)[(7)] sale, lease, or rental charges for telecommunications equipment **including separately stated installation charges**; [and]

(9)[(8)] installation of telecommunications services (service connection fee); and

(10) **private line services, including charges for related equipment. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. Other methods may be used if first approved in writing by the comptroller.**

(c) Services not taxable. Sales tax is not due on charges for:

(1) [interstate] long-distance telecommunications services **which are not both originated from, and billed to, a telephone number or billing or service address within Texas.** Records must clearly distinguish between **taxable and exempt** [interstate and intrastate] long distance services;

[(2) basic local exchange telephone service provided by a telephone company;]

(2)[(3)] broadcasts by commercial radio or television stations licensed or regulated by the FCC. See §3.313 of this title (relating to Cable Television Service) for the tax status of cable television service;

[(4) telecommunications services provided by telephone cooperatives exempted under §3.322 of this title (relating to Exempt Organizations);]

(3)[(5)] telecommunications services purchased for resale;

[(6) a service provided by a telephone company which is paid for by the insertion of coins or tokens into a telephone provided by a telephone company;]

(4)[(7)] [interstate] telegraph services **which are not both originated from, and billed to, a person within Texas**; and

[(8) separately stated charges for installation of tangible personal property.]

(d) Charges separately stated. Charges for items listed in subsection (b) of this section must be separately stated from those charges listed in subsection (c) of this section.

(e) Resale of tangible personal property. Tangible personal property transferred by the provider of the taxable service to the care, custody, and control of the customer will be considered to be resold, and may be purchased tax free by the provider of the taxable service. Sales tax must be collected by the provider of the taxable service from the customer on the charge for such items. See §3.285 of this title (relating to **Resale Certificate**; Sales for Resale; Resale Certificate)).

(f) Resale of a service. Sales tax is not due on the charge by **one** [a telephone company to **another** [a provider of telecommunications services] for providing access to a local exchange network. Sales tax must be collected [by the provider of the taxable service] from the **final consumer** [customer] on the total charge for the service including the charge for access. See §3.285 of this title (relating to **Resale Certificate**; Sales for Resale).

(g) (No change.)

(h) Local tax. City, **county**, [and] Metropolitan Transit Authority (MTA), and **city transit department (CTD)** tax on telecommunications services is allocated to the location from which the call originates. If the point of origin cannot be determined, the local tax is allocated to the address to which the call is billed. Local tax cannot be imposed on telecommunications services prior to October 1, 1987. See §3.372 of this title (relating to Requirements for Adopting or Abolishing City Tax) and §3.422 of this title (relating to Requirements for Adopting or Abolishing MTA Tax) for information on how a city, **county**, or authority may impose local tax on telecommunications services after October 1, 1987. (Note: **The local sales tax exemptions on interstate long-distance telecommunications services may not be repealed.**)

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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TRD-8710162 Bob Bullock
Comptroller of Public
Accounts

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

Subchapter W. Amusement Machine Regulation

★ 34 TAC §3.601

The Comptroller of Public Accounts proposes new §3.601, concerning definitions. The new section establishes the definitions the comptroller will use in administering the Coin-Operated Services Law. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Fourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

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

Applicant or licensee-- Each partner of a partnership; each trustee of a trust; each receiver of a receivership; each shareholder owning not less than 25% of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, where applicable, the business entity itself.

Issue a license-- A license issued on an applicant's original application or a license issued on an application for renewal.

License-- A general business license, import license, or repair license issued by the comptroller.

Machine or amusement machine-- In the sections published by the comptroller relating to the Coin-Operated Services Law, all machines which vend music, skill, or pleasure. The term "machine," as used in these sections, does not include service machines or machines which dispense a product. Coin-operated machines which dispense a product that require skill or pleasure to activate the dispensing of a product constitutes a machine played for skill or pleasure. A machine is subject to tax if it is coin operated for music, skill, or pleasure, capable of independent operation and independent viewing in an independent cabinet with separate activating coin mechanisms whether displayed separately or in series, and regardless of any central electrical, mechanical, or manual component, shall be considered separate machines in regard to occupation tax requirements. A machine which is no longer functional, and has been permanently taken out of service, will not be considered to be a coin-operated machine operated for music, skill, or pleasure. A machine only temporarily taken out of service is a machine subject to the annual occupation tax. A machine permanently taken out of service means a machine which is no

longer functional of independent operation or will be used only for parts. No longer functional means that it is no longer financially practical to operate the machine.

Machines designed exclusively for children—Machines which can only be used for skill or pleasure by a child under 12 years of age.

Owner—Any person, individual, firm, company, association, or corporation owning any coin-operated machines in this state.

Owner of a registration certificate—An owner who possesses a valid registration certificate issued by the comptroller.

Permit—The decal issued by the comptroller to an owner of a coin-operated machine evidencing the payment of the occupation tax.

Person—Any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

Video game—An electronic mechanism played for skill or pleasure by means of images on a screen. Each cabinet which holds a game for skill or pleasure by means of images on a screen constitutes an independent operation subject to the occupation tax. If there are two or more screens within the same cabinet, the machine must be considered to be a single mechanism by the manufacturer to qualify as a single amusement machine.

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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(512) 463-4004.



★ 34 TAC §3.602

The Comptroller of Public Accounts proposes new §3.602, concerning license and registration certificate renewal and occupation tax permit renewal due dates. The new section establishes the due dates that will be used for the combined application for renewal of licenses and occupation tax permits as well as the combined application for renewal of registration certificates and occupation tax permits. The new section also adopts prorations for quarterly occupation tax permits. The new section prohibits the proration of license and registration certificate fees.

The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides that the

administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987. The new section eliminates duplicate paper work of processing fees for the license and registration certificate renewals separately from the occupation tax permit renewals.

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 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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.602. *License and Registration Certificate Renewal and Occupation Tax Permit Renewal Due Dates.*

(a) Annual general business, import, and/or repair license renewals and annual occupation tax.

(1) License renewal and annual occupation tax applications are due November 30. License renewal applications will not be processed unless the annual occupation tax application is completed and the tax due as well as the license fee is remitted by the due date of November 30. License renewal and annual occupation tax applications filed after the due date may result in a lapsed license.

If a license lapses, a business may not operate amusement machines during the lapsed period. A person who operates amusement machines with a lapsed license is guilty of a Class B misdemeanor.

(2) An applicant who properly completes and remits all fees and taxes with his application by the due date may operate amusement machines without a license lapse unless the applicant is notified by the comptroller prior to the license expiration date of a problem with the license renewal.

(b) Annual registration certificate renewals and annual occupation tax reports.

(1) Registration certificate renewal and annual occupation tax applications are due November 30. Registration certificate renewal applications will not be processed unless the annual occupation tax application

is completed and the tax due as well as the registration fee is remitted by the due date of November 30. Registration certificate renewals and annual occupation tax applications filed after the due date may result in a lapsed registration certificate. If a registration certificate lapses, a business may not operate amusement machines during the lapsed period. A person who operates amusement machines with a lapsed registration certificate is guilty of a Class B misdemeanor.

(2) An applicant who properly completes and remits all fees with his application by the due date may operate amusement machines without a license lapse unless the applicant is notified by the comptroller prior to the registration certificate expiration date of a problem with the registration certificate renewal.

(c) Quarterly occupation tax.

(1) Each amusement machine is subject to the occupation tax at the first moment in time a person owns, controls, possesses, exhibits, displays, or permits a machine to be exhibited or displayed in this state with the exception of annual renewals. The occupation tax for annual renewals for each machine a person owns, controls, possesses, exhibits, displays, or permits a machine to be exhibited or displayed in this state is due November 30 of each year.

(2) The following rate schedule will be applicable to machines purchased or obtained to own, control, possess, exhibit, display, or purchased or obtained to permit a machine to be exhibited or displayed in this state during any quarter of the calendar year:

TAX RATE SCHEDULE—ALL COIN-OPERATED MACHINES FOR MUSIC, SKILL, OR PLEASURE

1st Quarter—January 1 to December 31—\$30;
2nd Quarter—April 1 to December 31—\$22.50;
3rd Quarter—July 1 to December 31—\$15;
4th Quarter—October 1 to December 31—\$7.50

(3) License and registration certificate fees may not be prorated quarterly and the annual license or registration fee must be submitted with an application.

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 November 12, 1987.

TRD-8710164 Bob Bullock
Comptroller of Public
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December 21, 1987

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



★34 TAC §3.603

The Comptroller of Public Accounts proposes new §3.603, concerning denials; suspensions; revocations; violations; hearings. The new section provides clarification of notice requirements for hearings conducted by the comptroller and provides that the comptroller's rules of practice and procedure will be used in conducting a hearing. The new section also provides for a court reporter and the associated expense allocation when conducting a hearing.

The new section clarifies the administrative procedure for violations of the Coin-Operated Services Law. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.603. *Denials; Suspensions; Revocations; Violations; Hearings.*

(a) If the comptroller determines that an applicant is not eligible for a license or registration certificate either for a first time applicant or renewal applicant, or that grounds exist which would justify revocation of an existing license, or that grounds exist for other sanctions, the comptroller will notify the applicant in writing of the violation or that the application has been denied and will state the reasons for the violation or denial. The applicant may make a written request for a hearing within 10 days of the date of the notice.

(b) The hearing will be conducted in accordance with the relevant portions of §§1.1-1.42 of this title (relating to Rules of

Practice and Procedure). The burden of proof is upon the applicant to establish by a preponderance of the evidence its eligibility for a license.

(c) Proceedings to impose sanctions, suspend, revoke, or deny a license will be initiated by the comptroller by serving a notice requiring the licensee to show cause at a hearing why its license or authorization should not be suspended, revoked, denied, or have other sanctions imposed. Ten days notice shall be given:

(1) after an original license application has been refused;

(2) before the application for a renewal of a license may be refused;

(3) before the comptroller may file a recommendation of revocation, denial or other sanctions with the attorney general; or

(4) before the comptroller may revoke a license or impose other sanctions allowed for by the Coin-Operated Services Law.

(d) The notice will be served personally by the comptroller or an authorized representative upon an applicant or licensee or sent by United States certified mail addressed to the applicant or licensee at their last known address. In the event that notice cannot be effected by either of these methods after due diligence, notice will be effective by publishing notice of the hearing in a newspaper of general circulation in the area in which the licensee conducts their business activities.

(e) The notice will state the alleged violations which constitute grounds for a denial, suspension, revocation, or other sanctions. The notice will include the recommendation to the attorney general, if any, and the proposed final action of the comptroller.

(f) After a notice of suspension or revocation has been served, the licensee or registration certificate holder will have an opportunity for a hearing upon the question of renewal of a license or registration certificate if it would expire within a lapsed period. If a hearing is requested, it will be held within 20 days from the date the comptroller receives the request. If the licensee or registration certificate holder does not request a hearing on renewal within 10 days after the date of the notice of suspension or revocation, the hearing is waived and a final order will be issued.

(g) Any order refusing an application or renewal application, or revocation of a license or registration certificate shall state the reasons for refusal or revocation, and a copy of the order shall be delivered immediately to the applicant, licensee, or registration certificate holder.

(h) An order recommending cancellation, or suspension of a registration certificate or license, or any other sanction, shall state the reasons for the cancellation, suspension, or other sanction. A copy of the order shall be delivered immediately to the licensee or registration certificate holder.

(i) A court reporter shall be present at every hearing involving an applicant, licensee, or registration certificate holder. The cost of transcribing the hearing by the reporter shall be assessed against the applicant, licensee, or registration certificate holder following the hearing. Should the comptroller determine a transcript of the hearing is required, the cost of the original transcript shall be assessed to the applicant, licensee, or registration certificate holder. They may purchase a copy of the transcript for their own use directly from the court reporter. Should the comptroller determine a transcript is not required, the applicant, licensee, or registration certificate holder may purchase a copy of the transcript for their own use directly from the court reporter. If they purchase a copy of the transcript, they shall provide, at their own cost, the original transcript to the comptroller.

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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Bob Bullock
Comptroller of Public
Accounts

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



★34 TAC §3.604

The Comptroller of Public Accounts proposes new §3.604, concerning licenses and registration certificates. The new section clarifies requirements for obtaining a license and clarifies requirements for obtaining a registration certificate under the Coin-Operated Services Law. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817

§3.604. Licenses and Registration Certificates.

(a) Annual general business, import, and/or repair license fees and registration certificate fees. Annual license and registration certificate fees are payable in advance and cannot be prorated quarterly.

(b) Refund of license or registration certificate fees. A license or registration certificate fee is not refundable after a license has been issued. In the event a license is not issued, the comptroller will retain \$25 to cover administrative costs and refund the balance.

(c) Age requirements for issuance of a license. No natural person shall be issued a license by the comptroller for the operation of coin-operated machines unless at the time the license is issued the applicant is above the age of 18 years.

(d) Information requirement for issuance of a license or registration certificate. An applicant for a license or registration certificate must complete all information asked for in the comptroller's application before a license or registration certificate will be issued or renewed.

(e) Registration certificate notification requirement. A registration certificate holder must notify the comptroller in writing each time the location of a machine is changed within 10 days of the change.

(f) Occasional sale exemption for registration certificate holder. A registration certificate holder may make one or two sales of coin-operated machines during any 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling coin-operated machines without losing the licensing exemption. Before the third sale of a coin-operated machine in a 12-month period by a person not previously in the business of selling, leasing, or renting coin-operated machines, a general business or import license must be obtained. The transfer of title or possession of more than one machine in a single transaction will constitute one sale.

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

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Comptroller of Public
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(512) 463-4004.

★34 TAC §3.605

The Comptroller of Public Accounts proposes new §3.605, concerning persons who repair, maintain, and service amusement machines. The new section clarifies who may qualify to repair machines under a repair license. The new section implements the administration of House Bill 254, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Service Law, Texas Civil Statutes, Article 8801-8817.

§3.605. Persons Who Repair, Maintain, or Service Amusement Machines. Any person who repairs, maintains, or services any amusement machine for money or anything of value is required to possess a valid license issued by the comptroller, unless such person is engaged as an employee of an employer who possesses a valid license issued by the comptroller and he repairs, maintains, or services only those amusement machines of his employer.

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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Bob Bullock
Comptroller of Public
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(512) 463-4004.

★34 TAC §3.606

The Comptroller of Public Accounts proposes new §3.606, concerning record keeping requirements. The new section clarifies record keeping requirements for license holders. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.606. Record Keeping Requirements.

(a) In addition to all other record keeping requirements, each licensee shall maintain at the designated address, for inspection at all times by the comptroller, a complete and separate record of each and every amusement machine purchased, received, possessed, controlled, handled, exhibited, or operated by him in this state for a period of two years. Under this section the following information shall be shown in the licensee's records:

(1) the full name and address of the owner of each and every machine, or if other than an individual, the principal officers or members thereof and their addresses;

(2) the date each machine was acquired or received in Texas;

(3) the make, type, and serial number of each and every machine;

(4) the date each machine was first

placed in operation;

(5) the date of the first and most recent registration of each machine;

(6) the location or locations of each machine including county, city, street, and/or route number;

(7) every change of location of each machine;

(8) the name and address of each location operator to whom an amusement machine is bailed or leased;

(9) every change in ownership of each machine;

(10) the distribution of the gross receipts for each location that a machine is located and the receipts from each machine;

(11) the date each machine was taken out of operation, the reason the machine was taken out of operation, and the location of a machine taken out of operation or the description of the final disposition of a machine; and

(12) all contracts made with location owners.

(b) Depreciation schedules and federal income tax returns must be maintained for four years to be in compliance with the sales tax statutes.

(c) Purchase invoices for the machines must be maintained for four years to be in compliance with the sales tax statutes.

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 November 12, 1987.

TRD-8710169 Bob Bullock
Comptroller of Public
Accounts

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For further information, please call
(512) 464-4004.



★ 34 TAC §3.607

The Comptroller of Public Accounts proposes new §3.607, concerning Tax Permits. The new section clarifies requirements for replacement of lost, stolen, or destroyed occupation tax permits, assignment of tax permits, and attachment of tax permits to amusement machines. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.607. Tax Permits.

(a) Replacement of lost, stolen, or destroyed valid Occupation Tax Permits. The comptroller shall not make a cash refund of the occupation tax paid on any coin-operated machine. The comptroller shall provide a duplicate permit if a valid permit is \$5.00. If a tax permit is lost, stolen, or destroyed, a sworn statement must be signed explaining the circumstances by which the tax permit was lost, stolen, or destroyed before a replacement permit can be issued. A permit for which a duplicate permit has been issued is void.

(b) Assignment of tax permits. Each coin-operated machine operated for music, skill, or pleasure shall be registered with the comptroller by make, model, and serial number. A tax permit issued by the comptroller shall be affixed to each such registered machine. Each coin-operated machine shall have a serial number which is clearly visible on the outside surface of the machine. If a coin-operated machine is not manufactured with a serial number, a licensee or registration certificate holder shall assign a serial number to the machine and either stamp or engrave the assigned number on the machine. If all these requirements have been met, a tax permit may be assigned upon the transfer of title or possession of a machine.

(c) Attachment of tax permits. Tax permits shall be securely affixed to any permanent surface on a machine in such a manner that the tax permits may be clearly seen by the public and that will require continued application of steam and water to remove the tax permit.

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 November 12, 1987.

TRD-8710170 Bob Bullock
Comptroller of Public
Accounts

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



★ 34 TAC §3.608

The Comptroller of Public Accounts proposes new §3.608, concerning gross receipts regulations. The new section clarifies requirements for distribution of gross receipts from amusement machines, collection records of distribution of gross receipts from amusement machines, and entry to cash boxes of amusement machines. The new section implements the administration of House Bill 524, 70th Legislature, 1987, which provides that the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 the 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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.608. Gross Receipts Regulations.

(a) Distribution of gross receipts from amusement machines. The term "gross receipts from an amusement machine" is defined to be the total sum of money derived from the operation of a coin-operated machine which vends music, skill, or pleasure. No licensee shall enter into a contract or offer to contract with a bailee or lessee (location operator) of an amusement machine to compensate the bailee or lessee in excess of 50% of the gross receipts from an amusement machine, except that a licensee may refund a bailee or lessee of an amusement machine all money accepted by an amusement machine due to its malfunction. Before any money may be refunded under this exception, the name, address, and

temporarily extended and when an application for a new license or registration certificate must be filed. The new section is needed to implement the administration of House Bill 524, 70th Legislature, 1987, which provides the administration of amusement machine regulation and taxation is the responsibility of the Comptroller of Public Accounts, effective September 1, 1987.

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 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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Texas Civil Statutes, Article 8807(1), which provides that the Comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Article 8801-8817.

§3.610. *Changes in Ownership Information or Other Reporting Information.*

(a) If any partner of a partnership; trustee of a trust; receiver of a receivership; officer or director of a corporation; shareholder owning 25% or more of the outstanding shares or bonds of a corporation; individual applicant or licensee; officer, director, or member of an association or other entity changes from the date the last ownership information was filed with the comptroller, written notification of the ownership change must be filed with the comptroller within 10 days of the ownership change.

(b) If any information on an application changes from the date the last application was filed or any information changes from the last date the comptroller was notified of an information change, written notification of the change must be filed with the comptroller within 10 days of the change.

(c) If the owners of a corporation change without changing the business entity, a written notification of the change must be filed with the comptroller within 10 days of the change. The business entity may continue to operate under its existing license or registration certificate.

(d) If partners in a partnership change, or another business entity dissolu-

tion occurs, the successor in interest must file for a new license or request a temporary extension of a license. To request a temporary extension of a license, the successor in interest must file with the comptroller a certification by the county judge of the county in which the business is located that the person requesting the extension is successor in interest. An original license application is necessary upon the renewal date. A successor in interest is one who takes over the ownership interest of a business entity and does not include persons who purchase the assets of a licensed entity. In the case of a sole proprietor, only when there is successor in interest as the result of the death of the licensee, which is certified by a county judge of the county in which the business is located, can there be an extension of a license. In all other instances, the entity taking over a sole proprietor's interest must obtain a license.

(e) A registration certificate goes to the entity name which holds the registration certificate. If the shareholders of a corporation change, no new registration certificate must be filed. If a new partnership is created by the admission or deletion of a partner, a new registration certificate must be obtained from the date of the change since the legal entity which owns the amusement machines has now changed. A change in a sole proprietor's interest will result in the need to obtain a new registration certificate.

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 November 12, 1987.

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Comptroller of Public
Accounts

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December 21, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §3.611

The Comptroller of Public Accounts proposes new §3.611, concerning protest procedure for sealed machines. The new section provides procedures for protesting a tax due on a machine or a claim that a machine was sealed in error. The new section also provides that a hearing on sealed machines be conducted in accordance with the comptroller's rules of practice and procedure. The new section also provides that a court reporter will not be used unless requested by a party to the hearing. The new section is needed to provide due process for individuals who have an interest in amusement machines which have been sealed.

John Moore, director of the comptroller's economic analysis center, has deter-

mined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact 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 continued regulation of amusement machines in the state. 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 Tom Tourtellotte, Regulatory Taxes Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 8807(1), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Coin-Operated Services Law, Texas Civil Statutes, Articles 8801-8817.

§3.611. *Protest Procedure for Sealed Machines.*

(a) After an amusement machine has been sealed and an individual who has an interest in the machine wishes to dispute the tax due on the machine, the individual must file with the comptroller a letter within 10 days from the date on the sealing notice. The letter of protest must contain a request for a hearing and state the specific grounds on which the individual claims the tax is not due or that a machine was sealed in error.

(b) The comptroller shall provide a hearing within three days from the date the letter of protest is received by the comptroller.

(c) The hearing will be conducted in accordance with the relevant portions of §§1.1-1.42 of this title (relating to Rules of Practice and Procedure). The burden of proof is upon the applicant to establish that the machine was sealed in error or that tax is not due on the machine.

(d) A court reporter will not be used in hearings involving only merits of a sealed machine unless a reporter is requested by a party to the hearing. If a reporter is requested, the cost of the reporter shall be assessed against the party requesting the court reporter.

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 November 12, 1987.

TRD-8710174 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
December 21, 1987
For further information, please call
(512) 463-4004

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Emergency and Pursuit Operations Without Use of Emergency Warning Devices

★37 TAC §1.191

The Texas Department of Public Safety proposes an amendment to §1.191, concerning emergency vehicle operation. The language in subsection (b) is deleted and new language is added, since designated office is no longer required to be defined by statutory requirement. The new language requires the driver of an emergency vehicle to consider the safety of others when not operating emergency lights or siren.

Melvin C. Peeples, assistant chief of fiscal affairs, 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.

Charles C. Dorbandt, lieutenant, 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 assurance to the public that the department emergency vehicles used for law enforcement purposes are operated within statutory requirements when emergency warning devices are not used. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Government Code. §411.004(3) and §411.006(4), which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the commission, shall have the authority to adopt rules considered necessary for the control of the department.

§1.191. *Emergency Vehicle Operation.*

(a) (No change.)

(b) **In deciding not to operate the emergency lights or siren in compliance with the provisions of Texas Civil Statutes, Article 6701d, §24(d), the driver of the emergency vehicle should give consideration to the safety of others.** [Pursuant to said statute, the department has defined designated office to mean any law enforcement radio sta-

tion which maintains an activity log and to which department personnel have immediate radio access.]

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 November 9, 1987.

TRD 8710156

Leo E. Gossett
Director
Texas Department of
Public Safety

Earliest possible date of adoption:
December 21, 1987

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) proposes amendments to §§48.1201, 48.2919, 48.2928, and 48.3903 and the repeal of §§48.5907, 48.8902, and 48.9803 concerning definitions, eligibility, case management, contracting for CCAD Services, minimum standards, and support documents, respectively. The amendments delete some definitions, revise others, and add requirements for client eligibility in the Emergency Response Services (ERS) program. The amendments also add conditions that result in emergency response services being terminated. The repeals delete information about ERS claims payment, minimum standards for ERS providers, and ERS reimbursement methodology. This information will be consolidated in the new emergency response services rule chapter that the department is simultaneously proposing for adoption.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections and repeals will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections and repeals.

Mr Packard also has determined that for each year of the first five years the sections and repeals are in effect the public benefit anticipated as a result of enforcing the sections and repeals will be the consolidation into one chapter all requirements for providers delivering emergency response services, thereby giving providers a clearer understanding

of the requirements. There is no anticipated economic cost to individuals who are required to comply with the proposed sections and repeals.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-238, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Definitions

★40 TAC §48.1201

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.1201. *Definitions of Program Terms.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

[Emergency response services—Services provided through an electronic monitoring system for functionally impaired elderly or disabled persons who are living alone or are functionally isolated in the community. The system has a call button which is carried or worn by the client. The client presses the button in an emergency to signal for help. The system, which has a 24-hour, seven-day-a-week monitoring capability, ensures that the appropriate person or service agency responds to an alarm call from a client.]

Responder—A [Any] person(s) [person] who responds [has agreed] to an emergency call activated by a client [assist the emergency response client by responding to an emergency call]. Responders may include a relative, neighbor, volunteer, or staff of a sheriff's department, police department, [or] emergency medical service, or fire department.

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 November 16, 1987.

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Marlin W. Johnston
Commissioner
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For further information, please call
(512) 450-3765

Eligibility

★40 TAC §48.2919, §48.2928

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department

with the authority to administer public and medical assistance programs.

§48.2919. *Adult Protective Time-limited Eligibility*

(a) (No change.)

(b) Clients with time-limited eligibility status are eligible for:

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

(4) emergency care services in a residential care [supervised living] or adult foster care setting; and

(5) emergency response services;

and]

(5)(6) special services for handicapped adults.

§48.2928. *Emergency Response Services.* A client must score at least 18 on the client needs assessment questionnaire and meet the requirements in paragraphs (1)-(5) [(3)] of this section to be eligible for emergency response services. Individuals receiving emergency response services on July 1, 1986, continue to be eligible for services as long as they score at least nine on the client needs assessment questionnaire. If services are terminated for these grandfathered clients, [discontinue receiving services] they must meet an eligibility score of at least 18 [in order] to requalify [qualify] for [future] services.

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

(4) **Be willing to sign a release statement that allows the responder to make a forced entry into the client's home if he is asked to respond to an emergency alarm call and has no other means of entering the home to respond.**

(5) **Live in a place other than a skilled institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available.**

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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Case Management

★ 40 TAC §48.3903

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.3903. *Denial, Reduction, or Termination of Services.*

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

(c) The client is not eligible for emergency response services if:

(1) he abuses the service by activating:

(A)[(1)] four false alarms which result in a response by fire department, police/sheriff, or ambulance personnel within a six-month period; or

(B)[(2)] 20 false alarms of any kind within a six-month period;[.]

(2) **he is admitted to a skilled institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available;**

(3) **in the caseworker's judgment, he is no longer mentally alert enough to operate the equipment properly. Situations include, but are not limited to:**

(A) **he damages the equipment;**

(B) **he disconnects the equipment and has received two warnings that are documented in the case record;**

(C) **he refuses to participate in the monthly system checks; or**

(4) **he is away from the home or is unable to participate in the service delivery for three consecutive months or more.**

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

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Contracting for CCAD Services

★ 40 TAC §48.5907

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.5907. *Special Payments for Emergency Response Services.*

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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Minimum Standards

★ 40 TAC §48.8902

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.8902. *Minimum Standards for Agencies Contracted To Provide Emergency Response Services.*

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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Support Documents

★ 40 TAC §48.9803

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.9803. *Reimbursement Methodology for Emergency Response Services.*

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 52. Emergency Response Services

The Texas Department of Human Services (DHS) proposes new §§52.101, 52.201-52.204, 52.301, 52.401-52.403, 52.501-52.503, and 52.601-52.603, concerning emergency response services (ERS). The

new sections explain program requirements for emergency response services and clarify service delivery expectations. The department is simultaneously amending and repealing information in its community care for aged and disabled chapter so that it may be consolidated with information in this chapter.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Packard also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be that ERS program requirements will be outlined more clearly and that providers will have a better understanding of those requirements. 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 Cathy Rossberg, Administrator, Policy Development Support Division-238, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Definitions

★ 40 TAC §52.101

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs.

§52.101. *Definitions of Program Terms.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Abuse—The willful infliction of injury; unreasonable confinement; intimidation; or cruel punishment with resulting physical harm, pain, or mental anguish; or the willful deprivation of goods or services necessary to avoid physical harm, mental anguish, or mental illness.

Activated alarm call—A signal transmitted from the client's home unit to the response center indicating that the client needs immediate assistance.

Adult—A person age 18 or older.

Aged or elderly person—A person age 65 or older.

Assignee—A legal entity that plans to take over a current emergency response contract through a legal assignment of the contract from another legal entity.

Assignor—A legal entity that plans to assign its current emergency response contract to another legal entity through a legal assignment of the contract.

Call button—An electronic device that, when pressed, triggers an alarm to the response center to alert the provider agency that the client needs immediate assistance. The device may be held in the hand, worn around the neck, hung on a garment, or kept within the client's reach.

Client—A person who the case-worker determines is eligible for emergency response services.

Contractor—The provider agency.

Days—All are calendar days not workdays, unless otherwise noted in the text.

Department—The Texas Department of Human Services.

Disabled person—A person who, because of physical, mental, or developmental impairment, is limited in his capacity to adequately perform one or more essential activities of daily living. Activities of daily living include, but are not limited to, personal and health care, mobility, communication, and money management.

Exploitation—The illegal or improper act or process of a caretaker or others using the resources of an adult for monetary or personal benefit, profit, or gain.

Fraud—A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for services to which a person is not entitled.

Income eligible—An adult, who is not an SSI or AFDC client, but who has income and resources equal to or less than the eligibility level established by the department.

Installer—A volunteer, subcontractor, or an employee of the provider agency who connects the emergency response equipment in the client's home.

Institution—A nursing home, state school, or state hospital.

Local—The geographic area to be served by the provider agency, within the radius of a local telephone call to the largest city or town covered by the emergency response contract.

Long distance—The geographic area to be served by the provider agency, outside the local call area of the largest city or town covered by the emergency response contract.

Medicaid-eligible—A person eligible for Medicaid as an SSI or AFDC client or eligible for medical assistance only while living in the community.

Monitor—A volunteer, subcontractor, or an employee of the provider agency who monitors services 24 hours a day, seven days a week and ensures that alarm calls are responded to immediately.

Neglect—The failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide the goods or services.

Provider agency—The legal entity that has a contract with the department to deliver emergency response services to eligible clients.

Responder—Any person(s) who responds to an emergency call activated by a

client. Responders may include a relative, neighbor, volunteer, or staff of a sheriff's department, police department, emergency medical service, or fire department.

Response center—The site where the emergency response base station equipment is located and monitored.

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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Contracting for Emergency Response Services

★ 40 TAC §§52.201-52.204

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§52.201. *General Contracting Requirements.*

(a) To contract with the Texas Department of Human Services (DHS) to provide services, a legal entity must:

(1) have a 24-hour, seven-day-a-week emergency response monitoring capability; and

(2) be a public agency or a private nonprofit or profit corporation that is either chartered with or authorized by the secretary of state to transact business within the state.

(b) The provider agency must connect the home unit equipment to the monitoring system and ensure that the equipment has an alternate power source if the power fails. The equipment at the response center must be equipped with a tape readout that prints the code number of the alarm, the unit, subscriber number, the date, and the time of the activated alarm.

(c) The provider agency must comply with all provisions of the contract, the emergency response services provider manual and revisions, policy clarifications, federal laws and regulations, applicable statutes, and department rules and any subsequent additions, deletions, and amendments to those rules.

(d) Within 24 hours of awareness, the provider agency must report suspected cases of abuse, neglect, and exploitation to the local adult protective services or community care for aged and disabled unit or the DHS hotline: 1-800-252-5400.

(e) When providing services under the

contract, neither the provider agency nor the provider agency's employees, agents, or representatives may solicit or accept gifts, favors, or any other items of value from the client or other persons on the client's behalf.

(f) The provider agency must notify the department in writing of any change in its ownership at least 60 days before the change. A change in ownership is any change that, in the department's opinion, materially or substantially alters the business organization of the entity actually responsible for delivering services to department clients.

§52.202. *Methods of Contracting.*

(a) The department purchases emergency response services through competitive or noncompetitive negotiation as described in §69.203 of this title (relating to Methods of Purchase).

(b) The department may renew contracts as specified in §69.204 of this title (relating to Duration and Renewal of Contracts). The department may renew a contract that is awarded through noncompetitive negotiation if the provider agency complies with program requirements and if the negotiated unit rate(s) does not exceed the statewide ceiling.

§52.203. *Subcontracting.*

(a) The provider agency must not subcontract any services to be performed under the contract or assign or transfer the contract or monies without the department's written prior approval.

(b) To obtain the department's written prior approval for a subcontract, the subcontractor must meet the same requirements as the prime contractor. The prime contractor is still legally responsible.

§52.204. *Contract Assignments.*

(a) A contract assignment may be made as part of an ownership change, a change in tax status, or a transfer from one legal entity to another through a legal process.

(b) If planning to assign the contract, the provider agency must notify the regional contract manager in writing at least 60 days before the proposed date of the assignment. The legal name of the entity that will be assuming the contract must be included in the notification. If the provider agency fails to provide this information, the contract assignment will be delayed. The department reserves the right to reject a contract assignment if it is not in the department's or its clients' best interests.

(c) The assignee must follow the requirements of this subsection before a contract assignment may be made.

(1) Resolve all audits completed or in process.

(2) Prepare a contract assignment agreement.

(A) The contract assignment agreement must include the following statements.

(i) Both the assignee and

assignor are liable for any audit exceptions incurred and for any adverse actions taken by the department based on actions occurring during the contract period before the contract assignment. Both agencies must agree that the department reserves the right to receive restitution for any audit exceptions from either provider agency. Any adverse action pending or in place when the contract is assigned will be applied to both the assignee and the assignor.

(ii) The assignee is responsible for collecting and reporting a full year's expense data, including the assignor's portion of the department's cost report.

(iii) The assignee will adhere to the service contract, reimbursement method and amount, service delivery requirements, and standards established by the department.

(iv) The assignee meets all criteria for being a provider agency of emergency response services. Documentation of eligibility must be provided before the department will agree to a contract assignment.

(B) The contract assignment agreement must also:

(i) identify both legal entities;

(ii) identify the current contract number and service to be assigned;

(iii) be effective the first day of a month; and

(iv) be notarized and signed by the person authorized for each legal entity.

(3) Complete the following documents:

(A) corporate board of directors resolution form; and

(B) disclosure of ownership and control interest statement.

(4) Submit proof of meeting requirements in §52.201 of this title (relating to General Contracting Requirements).

(5) Return the contract assignment and necessary attachments to the regional contract manager.

(d) If a contract assignment does not meet all the requirements or does not include all the required documents, it will be considered unacceptable and returned to the assignor. Office of the General Counsel staff review and approve all contract assignments before they become effective. The effective date is the first day of the month after the application has been fully processed.

(e) If the legal entity does not meet the conditions for contracting before the contract assignment is effective, the department holds the current provider agency responsible for service delivery according to the terms of the contract.

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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(512) 450-3765.

Provider Agency Staff Requirements

★40 TAC §52.301

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§52.301. *Provider Staff Requirements.*

(a) The provider agency must employ a coordinator to be responsible for the overall management of the service and to ensure that services are delivered according to the provider manual, policies, and procedures established by department staff.

(b) The provider agency must have staff who are able to communicate with clients and who are responsible for installing the equipment. This staff may be employees, subcontractors, or volunteers.

(c) The installer(s) must not assume installation responsibilities until he has satisfied the coordinator that he is competent in all the following areas:

(1) installation procedures;

(2) proper use of the equipment;

(3) Federal Communications Commission requirements; and

(4) proper identification methods.

(d) The provider agency must have staff who are able to communicate with clients and who are responsible for monitoring the service delivery 24 hours a day, seven days a week. This staff may be employees, subcontractors, or volunteers.

(e) Monitors must not assume monitoring responsibilities until they have satisfied the coordinator that they are competent in all the following areas:

(1) procedures for responding to activated alarms;

(2) monitoring and documenting an alarm call from the time the alarm is received to the time the client receives assistance and the caseworker is notified;

(3) conducting and documenting monthly systems checks;

(4) recognizing client characteristics and needs; and

(5) using the emergency response equipment properly.

(f) The coordinator must document in the provider agency's records that each installer and monitor is competent in performing his job responsibilities.

(g) The provider agency must give each responder (other than emergency medical service, sheriff, fire, or police department personnel) written procedures that explain the service. The procedures must identify the responder's roles and responsibilities in delivering services. A copy of the

procedures must be given to the responder to sign, and a copy must be kept in the provider agency's files. The responder must receive the written procedures on or before the services are initiated.

(h) The provider agency must have written documentation that emergency medical service, sheriff, fire, and/or police department responders are notified that they have agreed to respond to emergencies when called upon by the provider agency. A copy of the written documentation must be kept in the provider agency's files.

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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Service Delivery Requirements

★ 40 TAC §§52.401-52.403

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§52.401. *Initiation of Services.*

(a) The provider agency must begin services within 14 days from the date on the approval for CCAD services—referral response form unless the referral is verbal. For verbal referrals, the provider agency must begin services on the date verbally negotiated with the caseworker.

(b) If operating at the full capacity designated in the contract, the provider agency returns the referral packet to the caseworker.

(c) If the client is not in the home during the first 14 days from the date on the approval for CCAD services—referral response form, the provider agency begins services as soon as possible after the client returns home.

(d) If services do not begin on the date verbally negotiated, the coordinator telephones the caseworker on the day services were scheduled to begin and explains why services were not begun.

(e) If the caseworker and the coordinator disagree about the appropriateness of a referral or about service delivery issues involving the client, supervisory staff of the two agencies resolve the differences. The CCAD program director is responsible for resolving differences among caseworker and provider agency staff. If they disagree about

the appropriateness of a referral, the coordinator may request that the caseworker approve a delay in beginning services. The request to delay service initiation is documented on the case information form.

(f) The provider agency must secure two responders for each client on or before the date services begin, unless the provider agency is able to document that the client has no available responders and that only one resource is available that can respond to emergencies.

(g) To initiate services, the provider agency must conduct a home visit. During the home visit, the installer:

(1) installs and makes an initial test of the emergency response equipment;

(2) explains to the client how to use the equipment;

(3) provides a written copy and explanation to the client of the complaint procedures; and

(4) has the client sign a statement that allows the responder to enter the client's home, by force if necessary, in an emergency. The installer may not install the equipment if the client refuses to sign the home entry release statement. In this case, the installer must inform the coordinator. The coordinator contacts the caseworker within two DHS workdays of the home visit and explains the client's refusal to sign the required release statement.

(h) The provider agency completes the client's card file after the home visit. The client's card file must include:

(1) the client's name, telephone number, address, and medical condition(s);

(2) the client's attending physician's name and telephone number;

(3) the responders' names and telephone numbers; and

(4) any other useful information.

(i) The provider agency must notify the caseworker of the status of all referrals within 21 days from the referral date.

§52.402. *Service Delivery.*

(a) The provider agency must respond to all alarm calls 24 hours a day, seven days a week. Failure to respond may result in contract termination.

(b) The monitor documents alarm calls as they are received and resolved. The documentation includes:

(1) the date and time the alarm is received;

(2) the name of the client;

(3) the name of the contacted responder(s);

(4) a brief description of the incident and a statement of how the incident was resolved; and

(5) the date the caseworker was notified.

(c) The provider agency must notify the caseworker of any client emergency that it responds to by the DHS workday following the incident. Notification must be followed up in writing within seven days after the occurrence.

(d) The provider agency must conduct a monthly systems check for each client or make a minimum of three attempts to reach the client on three different days during the month. The provider agency must document monthly systems checks and/or attempts to contact the client if the client was not home or not available.

(e) The provider agency must repair or replace equipment within one day of becoming aware that the equipment malfunctioned. The provider agency must ensure that once services have begun, a client is not without services for more than one day from the time the malfunction is reported.

(f) The provider agency must document equipment malfunctions. The documentation must include:

(1) the date that the provider agency became aware of the malfunction;

(2) the home unit or subscriber number;

(3) the location of the home unit;

(4) the description of the problem; and

(5) the date that the equipment is repaired or replaced.

(g) The provider agency must respond to all complaints in a reasonable and prompt manner. The provider agency must investigate and respond in writing to all written complaints received from DHS staff within 14 days of receipt. The provider agency must date stamp all written complaints and maintain accessible and available records of the complaint and its resolution.

(h) If the client's condition changes significantly, the provider agency must report it to the caseworker within seven days of awareness.

(i) If the coordinator, provider agency address, or telephone number changes, the provider agency must notify the regional contract manager in writing.

(j) The provider agency must ensure that service is not interrupted because of a change.

(k) The provider agency must test the equipment when the equipment is removed from the client's home, unless a monthly systems check has been conducted during the same calendar month or the provider agency is unable to test the equipment because:

(1) the client's telephone was disconnected;

(2) the client damaged his home unit; or

(3) the equipment was picked up at a location other than the client's home.

(l) If a contract is terminated, any department purchased equipment not in a client's home must be delivered to the location specified by department staff within five days of a written request.

(m) The department maintains disposition rights on equipment it purchased. The provider agency must tag equipment with permanent serial numbers and maintain:

(1) an inventory of the equipment;

and

(2) a record of the serial numbers and the specific locations of the home units.

§52.403. *Suspension and Termination of Services.*

(a) The provider agency must suspend services before the end of the authorization period and remove the equipment from the client's home, with or without obtaining caseworker approval, if:

(1) the client moves to another county where the provider agency does not provide services;

(2) the client is admitted to an institution, personal care home, foster care setting, or any other setting where 24-hour supervision is available;

(3) the client dies; or

(4) the client requests that services end.

(b) If the equipment is removed from the client's home, the provider agency must notify the caseworker by the next DHS workday. The provider agency must send a case information form requesting service termination to the caseworker within seven days of the notification.

(c) If any of the following situations occur, the provider agency must notify the caseworker within one DHS workday of awareness.

(1) The client abuses the service by activating:

(A) four false alarms which result in a response by fire department, policy/sheriff, or ambulance personnel within a six-month period; or

(B) 20 false alarms of any kind within a six-month period.

(2) The client is away from the home or is unable to participate in the service delivery for three consecutive months or more.

(3) The client is no longer mentally alert enough to operate the equipment properly.

(4) The client threatens the health or safety of others.

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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Claims

★ 40 TAC §§52.501-52.503

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§52.501. *Billing and Claims Payment.*

(a) The Texas Board of Human Services sets the unit rate ceilings for local and long distance service delivery based on data obtained from the cost report that each provider agency submits to the department. The department establishes the methodology for setting the reimbursement unit rate ceilings and establishes allowable and unallowable costs and cost report requirements.

(b) The department reimburses the provider agency according to the rate(s) specified in the contract for each unit of service to each client for whom the provider agency has received an approval for CCAD services—referral response form authorizing the provider agency to provide emergency response services.

(c) The long distance rate may apply if the client lives outside the local call area of the largest city or town within the geographic area to be served by the provider agency.

(d) The department pays the contract-specific unit rate not to exceed departmentally set rates.

(1) If the provider agency serves private-pay clients according to department standards, the contract-specific unit rate cannot exceed the average private-pay rate.

(2) Department staff calculate the private-pay rate by totaling the rates charged to private-pay persons receiving services and dividing the total by the number of private-pay persons. The resultant figure is the maximum unit rate for the entire contract period.

(3) The department does not pay separate installation fees, one-time fees, or special fees. These fees, however, can be considered in determining the private-pay monthly rate by amortizing them over a 12-month period.

(e) The department reimburses the cost of the required emergency response equipment through the contract-specific unit rate. This equipment includes the call button, the home communicator unit that relays emergency signals, jacks, and adapters. The cost of equipment at the response center is not reimbursable.

(f) The department may negotiate a single unit rate that combines local and long distance service delivery. The single rate must not exceed the established ceilings. The rate should be approximately proportional to:

(1) the projected number of local and long distance clients; and

(2) the number of departmentally purchased home units under five years old and other home unit equipment.

(g) The unit of service for emergency

response services is one calendar month. The provider agency is eligible for payment for a full month of service if the client receives services for any part of the month.

(h) The provider agency must not charge or take other recourse against the client, family members, or persons acting on the client's behalf for any claim the department denied or reduced because the provider agency failed to meet department rules, policies, or procedures.

(i) The provider agency is not entitled to payment if:

(1) services are not authorized on the approval for CCAD services—referral response form;

(2) the monthly systems check for each client is not conducted according to department rules and procedures; or

(3) services are delivered after the client's service delivery authorization date has expired or was terminated.

(j) The department may withhold a provider agency's vendor payments for reasons including, but not limited to, the following:

(1) failure to comply with the terms of the contract;

(2) failure to comply with rules in the provider manual; or

(3) termination of the contract (voluntary or involuntary).

(k) If the contract is terminated, the department places a vendor hold on one or more of the provider agency's contracts with the department. The vendor hold is not released until:

(1) a close-out audit is conducted and resolved; or

(2) an irrevocable letter of credit in a format approved by the department is submitted to release all or a portion of vendor payments on hold.

§52.502. *Reimbursement Methodology for Emergency Response Services.*

(a) Cost reporting.

(1) Content of cost report. Each provider agency must submit financial and statistical information at least annually in a cost report prescribed by the department.

(2) Cost report due date. The provider agency must submit the cost report no later than 90 days after receiving the cost report forms. An extension of the due date may be granted for good cause (when conditions are outside the provider agency's control). The provider agency must submit a written request to extend the due date.

(3) Reporting period. The provider agency must prepare the cost report to reflect its activities during the previous fiscal year. At the department's discretion, cost reports may be required for other periods.

(4) Failure to file an acceptable cost report. Failure to file a cost report according to all applicable rules and instructions may result in the department withholding all provider agency payments until the provider agency submits an acceptable report.



(5) Accounting requirements. The provider agency must ensure that financial and statistical data submitted in cost reports are based upon the accrual method of accounting, except for governmental institutions operated on the cash method of accounting. The treatment given any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants.

(6) Financial audits. Desk audits and on-site audits are performed periodically on all provider agencies participating in the program. The frequency and nature of the audits are determined by the department but are not less than that required by federal regulations relating to the administration of the program. Failure to allow the department to perform an audit in sufficient detail to verify reported information may result in the provider agency payments being withheld.

(7) Recordkeeping requirements. Records must be maintained according to the requirements in §69.202 of this title (relating to Contractors' Records).

(8) Failure to maintain records. A provider agency that is not maintaining adequate records to support the financial and statistical information reported in cost reports has 90 days to bring recordkeeping into compliance. Failure to correct deficiencies within 90 days from the date the provider agency is notified of deficiency may result in the contract being cancelled.

(b) Reimbursement rate ceiling determination.

(1) The reimbursement rate ceiling is determined on a per-month basis for local and long distance service. The ceiling applies to all provider agencies uniformly, regardless of geographic location or other factors.

(2) The reimbursement rate ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and a market survey analysis of emergency response equipment suppliers.

(3) The median cost of home unit equipment, as determined from the market survey of emergency response equipment suppliers, is used for rate ceiling determination. The median cost depreciated over a five-year period is factored into the per-month rate ceiling. Interest expenses incurred to purchase the home unit equipment are an allowed cost and are considered in the rate ceiling determination.

(4) The rate ceiling determination process recasts reported expense data in a consistent manner to determine per-month allowed costs. Reported expenses are combined into eight cost areas:

- (A) salaries and fringe benefits;
- (B) travel;
- (C) telephone;
- (D) building;
- (E) maintenance;
- (F) training;

(G) administration; and

(H) home unit equipment.

(5) Allowable expenses are projected from the provider agency's reporting period to the next ensuing rate period. Economic inflators or adjusters determined reasonable and appropriate by the department are used to calculate a prospective expense.

(6) The Texas Board of Human Services is responsible for approving the reimbursement rate ceiling.

(7) The reimbursement rate ceiling may not exceed the intermediate care facility (ICF) reimbursement rate set by the Texas Board of Human Services.

(c) Contract-specific unit rate. The actual rates for each contract are determined through the procurement process with department staff and the provider.

(1) Provider agencies that are currently providing services with department-owned equipment that was purchased on a cost reimbursement basis receive the unit rate less the equipment reimbursement until the department's five-year disposition rights on the purchased equipment expire. Services provided with department-owned equipment after the five-year limitation expires may be reimbursed at a rate that includes the equipment reimbursement.

(2) The contract-specific unit rate for each type of service includes reimbursement for salaries and fringe benefits, travel, telephone, building, maintenance, training, administration, and home unit equipment expenses.

(3) The equipment reimbursed under the unit rate becomes the provider agency's property.

(4) The contract-specific unit rate the department pays the provider agency is the full cost for emergency response services. The provider agency must not bill the client for any additional charges.

(d) Factors affecting allowable costs. To be allowable under this program, the provider agency must ensure that costs are:

(1) necessary and reasonable for the proper and efficient administration of a program to deliver services for which the department has contracted;

(2) authorized or not prohibited under state or local laws or regulations;

(3) consistent with any limitations or exclusions described in this section, federal or state laws, or other governing limitations on types or amounts of cost items;

(4) consistent with policies, regulations, and procedures that apply uniformly to both the Emergency Response Services Program and other activities of the organization of which the provider agency is part;

(5) subject to consistent treatment using generally accepted accounting principles appropriate to the circumstances;

(6) not allocable to or included as a cost of any other program in either the current or a prior period; and

(7) the net of all applicable credits.

(e) Definition of reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed the cost that would be incurred by an ordinarily prudent person conducting competitive business. In determining the reasonableness of a given cost, the department considers the following:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the business or its performance under the contract;

(2) the restraints or requirements imposed by generally accepted business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(3) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, or members, and the fulfillment of the purpose for which the business was organized.

(f) Unallowable costs. Unallowable costs are expenses the provider agencies incurred that are not directly or indirectly related to providing contracted services according to applicable laws, rules, and standards. The following list of expenses is not inclusive, but rather a guide to the various unallowable costs frequently seen in cost reports:

(1) advertising expenses, except advertising for employee recruitment and advertising to meet statutory or regulatory requirements;

(2) allowances for bad debts or other uncommon accounts;

(3) business expenses from business operations not related to providing services for which the department has contracted;

(4) contributions to political activities or to charity;

(5) discounts for administrative reasons; courtesy, cash, trade, and quantity discounts; rebates; or other discounts;

(6) dues and membership fees;

(7) entertainment expenses, except for entertainment that is reported as an employee benefit;

(8) expenses incurred for services not related to providing services contracted for by the department;

(9) expenses for purchasing goods and services from revenues received from restricted or unrestricted gifts, donations, endowments, and trusts;

(10) expenses that are not the provider agency's legal obligation;

(11) expenses of donated items, including depreciation and amortization of the value of the donations;

(12) fees for corporation or association board of directors, partnership, or corporation filing fees;

(13) fines and other penalties for violating statutes or ordinances and penalties for late payment of taxes, utilities, mortgages, and other similar penalties;

(14) fund-raising, promotion expenses, and public relations expenses;

(15) insurance expenses for life insurance premiums if the beneficiary is the provider agency, and for insurance on assets not related to delivering services for which the department has contracted;

(16) interest expense on loans for assets not related to delivering of services for which the department has contracted (interest expenses must be reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds);

(17) personal compensation to persons not providing services contributory to delivering services for which the department has contracted;

(18) personal expenses not related to delivering services for which the department has contracted;

(19) expenses for purchasing services, facilities, or supplies from related organizations or parties that exceed the lower of the cost to the related party or organization or the price of comparable services, facilities, or supplies purchased in an arm's length transaction;

(20) rental or lease expense on any item not related to delivering services for which the department has contracted;

(21) tax expenses for federal, state, or local income tax, and any tax levied on assets not related to delivering services for which the department has contracted; and

(22) transportation expenses for vehicles not generally suited to functions related to delivering services for which the department has contracted. Mileage can be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employee travel. Mileage is allowable if documentation is adequate and if the expense incurred was related to delivering services for which the department has contracted.

§52.503. Documentation Errors.

(a) Documentation errors may result in claims for services being disallowed. The documentation errors that may cause monetary exceptions are financial errors. Financial errors result in exceptions applied to the total amount paid for the unit of service.

(b) The department develops a statistical projection, based on the number or value of financial errors found in the audit or review sample, to determine the number or value of financial errors to be found in the total cases or claims for which the provider agency has been paid during the audit period.

(c) In the absence of acceptable secondary documentation, financial errors include, but are not limited to, the following.

(1) The provider agency bills the department at an incorrect unit rate for a particular client or contract. The department applies the error to the difference between the authorized unit rate(s) and the incorrect unit rate(s) for the month(s) claimed.

(2) The provider agency bills the department and fails to conduct a monthly systems check according to department rules. The department applies the error to the unit of service claim for the month(s) during which the monthly systems check is not conducted according to department rules.

(3) The provider agency bills the department for the month in which the home unit is removed from the client's home but fails to test the home unit at the time it is removed, or fails to document the reason(s) why the home unit cannot be tested. The department applies the error to the unit of service claimed for the month during which the home unit is removed from the client's home.

(4) The provider agency bills the department for services beyond the service authorization period. The department applies the error to the total number of units claimed that are beyond the service authorization period.

(5) The provider agency bills the department for equipment costs, but the home unit(s) cannot be located. The department applies the error to the total number of home units that cannot be located. The department considers equipment replacement costs in determining the total cost of the error. The total cost of this error is not extrapolated to all of the cases or claims for which the provider agency has been paid during the audit period.

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 November 16, 1987.

TRD-8710283

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:
February 1, 1988

For further information, please call
(512) 450-3765.

Reviews and Audits of Provider Agency Records

★ 40 TAC §§52.601-52.603

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§52.601. Recordkeeping Requirements.

(a) For each client, the provider agency must maintain records that include at least the following information:

(1) the client intake, summary of client's need for service, and approval for CCAD services—referral response forms;

(2) a record of the monthly systems checks or documentation that three attempts to contact the client were made;

(3) a record of each incident or alarm call;

(4) case information form;

(5) client card file;

(6) home entry release statement(s);
(7) if applicable, a record of approval to continue service delivery or a record of termination;

(8) a record of the orientation given to the client and the responders; and

(9) a record that the client received a verbal explanation and written copy of the provider agency's complaint procedures.

(b) The provider agency must give department staff the following information within seven days of receiving a written request:

(1) a list of the department's clients and their corresponding responders, including the responders' telephone numbers; and

(2) if applicable, a list of serial numbers and the location of departmentally purchased equipment.

(c) The provider agency must keep personnel records for each person who is an employee, subcontractor, or volunteer. The records must be kept in a central location in the region covered by the contract. They must include the person's employment date and documentation of the person's ability to perform job functions in his area of responsibility before assuming job responsibilities.

(d) The provider agency may request from department staff copies of missing service records. The provider agency reimburses the department for the actual cost of reproduction. Reproduction costs include the actual cost of staff time and equipment use and a minimal cost for each page reproduced. This service does not remove the provider agency's contractual obligation to maintain records.

(e) If the provider agency fails to maintain records, the department may:

(1) request corrective action plans;
(2) request monetary recoupment;

or

(3) terminate the provider agency's contract.

§52.602. Monitoring Services Delivery.

(a) If the provider agency fails to deliver services at a minimum acceptable performance level, the department may not renew the contract or may terminate it.

(b) To determine the provider agency's level of performance, department staff review cases against the terms of the contract and service delivery standards in the *Emergency Response Monitoring Guide*. The department establishes the minimum acceptable performance level for compliance with the standards and revises the monitoring guide as necessary.

(c) The department does not share the names of cases to be reviewed with the provider agency before the review date.

(d) If deficiencies are discovered during the review, the provider agency must develop and implement a detailed corrective action plan to correct them.

(e) The provider agency's failure to comply with corrective action plans may result in:

(1) a hold being placed on all payments;

(2) a hold being placed on client referrals; or

(3) the contract not being renewed or being terminated.

§52.603. Audits.

(a) Desk audits and on-site audits are performed according to the time frames in §52.502 of this title (relating to Reimbursement Methodology for Emergency Response Services).

(b) The provider agency is entitled to written notification from audit staff at least two weeks before an audit visit. The notice includes the auditors' names and requests the provider agency to assemble records for review, provide work space for the auditors, and assign appropriate staff to provide requested records.

(c) If the scheduled date and time causes undue hardship, the provider agency may immediately request a delay from the department audit supervisor.

(d) Provider agency staff must promptly provide requested records to expedite the audit and assure the provider agency sufficient opportunity to prove its claim for reimbursement.

(e) After the audit, department staff conduct an exit review with the provider agency to discuss the audit findings.

(f) Upon request and if the provider agency shows good cause, the auditor may allow the provider agency an additional 10 days after the exit review to show additional documentation that might change the audit findings.

(g) The provider agency is entitled to receive a formal audit report within 30 days after the exit review.

(h) The provider agency has 10 days after receiving the audit report to review the report and, if applicable, request a regional review of the findings. After 10 days, an official notice about the audit liability is sent to the provider agency.

(i) To request an appeal hearing, the provider agency must submit a letter or a formal petition presenting the audit findings in question and the reasons the provider agency believes they do not violate the contract provisions as alleged by the department. The request for an appeal must include the audit identification number of the particular audit(s) being appealed, and the dollar amount of the exception(s) being appealed. The request must be submitted according to the requirements in §79.1605 of this title (relating to Request for a Hearing).

(j) The provider agency must reimburse the department for any improper payments reflected in the department's audit reports. If the provider agency and the department agree to resolve the audit exception by implementing an installment payment plan, the provider agency must adhere

to the payment schedule. If the provider agency fails to submit the correct payment amount in the specified time, the department may withhold the provider's vendor payments or deduct the entire outstanding balance from the provider agency's claim(s).

(k) The department reimburses the provider agency for any underpayments reflected in the audit report(s). The department may withhold the reimbursement of an underpayment if the provider agency has an outstanding audit exception(s).

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 November 16, 1987

TRD-8710284

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption.

February 1, 1988
For further information, please call
(512) 450-3765.

◆ ◆ ◆

Chapter 69. Contracted Services

Subchapter L. Contract Administration

★40 TAC §69.263

The Texas Department of Human Services (DHS) proposes new §69.263, concerning responding to contractors' inquiries, in its contracted services chapter. The new section requires the department to respond to contractors' inquiries within 14 days of receiving the inquiry.

Brian Packard, associate commissioner for budget, planning, and economic analysis, 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 governments or small businesses as a result of enforcing or administering the section.

Mr. Packard 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 legislation passed by the 70th Legislature, 1987. 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 Cathy Rossberg, Administrator, Policy Development Support Division-538, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with

the authority to administer public assistance programs.

§69.263. *Response to Inquiries.* If department staff receive a written inquiry from a contractor, they must respond in writing no later than 14 days after the date on which they received the inquiry.

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 November 16, 1987.

TRD-8710270

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:

February 1, 1988
For further information, please call
(512) 450-3765.

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Part VI. Texas Commission for the Deaf

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter E. Recertification Procedures

★40 TAC §183.75

The Texas Commission for the Deaf (TCD) proposes an amendment to §183.75, concerning Board for Evaluation of Interpreters (BEI) recertification process. The amendment clarifies definitions of application and fees for recertification and provides for minimum recertification requirements in which TCD certified interpreters are required to validate and maintain their certificate after the conclusion of the last five-year certification period. The amendment conforms with Chapter 343, 70th Legislature, 1987.

Larry D. Evans, executive director, 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. Evans 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 assurance of continued quality of interpreter services by the commission through the BEI certification program. Only persons who are either certified interpreters here or are seeking interpreter certification here will be affected upon yearly validation and maintenance of their certificates. The anticipated economic cost to those individuals who are required to comply with the amendment as proposed will be fees of \$30 to \$40 for recer-

tification applications, depending on certification levels.

Comments on the proposal may be submitted to William F. Eckstein, Coordinator of Administrative Procedures/Services, P.O. Box 12904, Austin, Texas 78711. The comments will be delivered to the BEI for its initial action, and recommendations will be made to the commissioners for their approval at the next open meeting in December, 1987 or January, 1988.

The amendment is proposed under the Human Resources Code, §81.006(b)(3) and §81.007, which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules for BEI operations and interpreter certification program.

§183.75. *Recertification Process.* The Texas Commission for the Deaf interpreter certification shall be valid for a five-year period, provided maintenance requirements are met. At least 90 days prior to the conclusion of the five-year period, the interpreter shall be notified by mail of termination date of certificate. Within 30 days after the termination date of certificate, the interpreter must meet the requirements for recertification. The TCD interpreter recertification shall be valid for a five-year [10-year], provided maintenance requirements are met. The Board for Evaluation of Interpreters has established the following requirements and process for recertification.

(1) For Level I, the interpreter shall:

(A) submit **evaluation** application forms and payment of Level I **evaluation** fee; and

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

(D) submit **evaluation** application forms and payment of Level II **evaluation** fee; and

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

(2) For Level II, the interpreter shall:

(A) submit **evaluation** application forms and payment for evaluation at Level III; and

(B) (No change.)

(C) may receive certification at Level I, Level II, or Level III, depending upon test performance results; or,]

(D) submit **evaluation** application form and payment of Level III **evaluation** fee; and

(E) be evaluated within the next two scheduled evaluation dates; and

(F) may receive certification at Level III, Level IV, or Level V, depending on test performance results.

(3) For Level II, the interpreter shall:

(A) submit **evaluation** application forms and payment of Level III **evaluation** fee; and

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

(D) submit **evaluation** application forms and payment of Level IV or Level V **evaluation** fee; and

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

(G) submit recertification application forms and payment of Level III recertification fee; and

(H) submit **one of the following:**

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period;** or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period;** or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness within the last five-year certification period;** and

(I) submit copy of transcript along with interpreter training program recertification form showing a minimum of nine credit hours in interpreting training program courses or proof [of instruction] of nine hours as an instructor in interpreter training program courses or a combination of the two for review and approval; and

(J) [may] receive certification at Level III, depending upon **review of paperwork submitted and** approval by the board; or

(K) submit recertification application forms and payment of Level III recertification fee; and

(L) **submit one of the following:**

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period;** or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period;** or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness within the last five-year certification period;** and

(M)[(L)] submit form letter stating attendance in a total of 10 hours of workshop training or workshops conducted or any combination of the two in a **minimum of five separate workshop sessions** within the last five-year certification period for review and approval. The form letter shall include date, location, type of workshop, presenter, and workshop sponsor; and

(N)[(M)] may] receive certification at Level III, depending upon **review of paperwork submitted and** approval by the board.

(4) For Level IV, the interpreter shall:

(A) submit **evaluation** application forms and payment of Level IV **evaluation**

fee; and

(B) be evaluated within the next two scheduled evaluation dates; and

(C) (No change.)

(D) submit **evaluation** application forms and payment of Level V **evaluation** fee; and

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

(G) submit recertification application forms and payment of Level IV recertification fee; and

(H) submit **one of the following:**

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period;** or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period;** or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness within the last five-year certification period;** and

(I) submit copy of transcript showing a minimum of 12 [six] credit hours in interpreter training program courses or proof of 12 [instruction of six] hours as an instructor in interpreter training program courses or any combination of the two **within the last five-year certification period** [for review and approval]; and

(J) [may] receive certification at Level IV, depending upon **review of paperwork submitted and** approval by the board; or

(K) submit recertification application forms and payment of Level IV recertification fee; and

(L) **submit one of the following:**

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period;** or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period;** or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness within the last five-year certification period;** and

(M)[(L)] submit form letter stating attendance in a total of 20 [10] hours of workshop training or workshops conducted or any combination of the two in a **minimum of five separate workshop sessions** within the last five-year certification period [for review and approval]. The form letter shall include date, location, type of workshop, presenter, and sponsor; and

(N)[(M)] may] receive certifica-

tion at Level IV, depending upon **review and paperwork submitted and approval** by the board.

(5) For Level V, the interpreter shall:

(A) submit **evaluation** application forms and payment of Level V **evaluation fee**; and

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

(D) submit recertification application forms and payment of Level V **recertification fee**; and

(E) submit **one of the following**:

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period**; or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period**; or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness within the last five-year certification period**; and

(F) submit a copy of transcript showing a minimum of **12 [six] credit hours** in interpreting training program courses or proof of **12 [instruction of six] hours as an instructor** in interpreting training program courses or any combination of the two **within the last five-year certification period** [for review and approval]; and

(G) [may] receive certification at Level V, depending upon **review of paperwork submitted and approval** by the board; or

(H) submit recertification application forms and payment of Level V **recertification fee**; and

(I) submit **one of the following**:

(i) **completed** form letters from three hearing and three deaf consumers for whom interpreting services have been provided on different dates **within the last five-year certification period**; or

(ii) **documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments within the last five-year certification period**; or

(iii) **intermediaries only may submit documentation of service for two or more years on the board of or employed by**

an organization or agency dealing with some aspect of deafness within the last five-year certification period; and

(J)(1) submit form letter stating attendance in a total of **20 [10] hours** of workshop training or workshops conducted or any combination of the two **in a minimum of five separate workshop sessions** within the last five-year certification period [for review and approval]. The form letter shall include date, location, type of workshop, presenter, and workshop sponsor; and

(K)(J) receive certification at Level V, depending upon **review of paperwork submitted and approval** by 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 November 12, 1987

TRD 8710268

Larry D Evans
Executive Director
Texas Commission for
the Deaf

Earliest possible date of adoption.

December 21, 1987

For further information, please call
(512) 469-9891.



Name: Cruz Macias
Grade: 6
School: Dawson Elementary School,
Austin

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 republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas Chapter 5. Transportation Division

The Railroad Commission of Texas adopts amendments to §5.40, §5.184, §5.346 and §5.386, without changes to the proposed text published in the September 15, 1987, issue of the *Texas Register* (12 TexReg 3203).

The amendments will establish a filing fee of \$25 for those motor carriers, intercorporate transporters, and motor bus companies filing proof of insurance with the commission. These fees will be used to offset the cost of processing the filings received.

Under the amendments, \$25 must accompany the Form E which is filed by the insurance company on behalf of the motor carrier or motor bus company. The amendments will apply to all Form E filings received on or after January 1, 1988.

No comments were received regarding adoption of the amendments.

Subchapter B. Operating Certificates, Permits, and Licenses

★ 16 TAC §5.40

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139(c), which authorize the commission to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

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 November 9, 1987.

TRD-8710238 Jim Nugent
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: September 15, 1987
For further information, please call
(512) 463-7149.



Subchapter L. Insurance Requirements

★ 16 TAC §5.184

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139(c), which authorize the commission to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

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 November 9, 1987.

TRD-8710239 Jim Nugent
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: September 15, 1987
For further information, please call
(512) 463-7149.



Subchapter R. Registration of Interstate Operating Authority

★ 16 TAC §5.346

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139(c), which authorize the commission to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

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 November 9, 1987.

TRD-8710237 Jim Nugent
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: September 15, 1987
For further information, please call
(512) 463-7149.



Subchapter T. Registration of Operations Exempt from ICC Regulations

★ 16 TAC §5.386

The amendment is adopted under Texas Civil Statutes, Article 6701d, §139(c), which authorize the commission to establish a reasonable fee necessary to offset the administrative costs for insurance filings.

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 November 9, 1987.

TRD-8710240 Jim Nugent
Commissioner
Railroad Commission of
Texas

Effective date: January 1, 1988
Proposal publication date: September 15, 1987
For further information, please call
(512) 463-7149.



TITLE 28. INSURANCE Part I. State Board of Insurance

Chapter 11. Health Maintenance Organizations Subchapter F. Evidence of Coverage

★ 28 TAC §§11.501-11.506, 11.508, 11.509

The State Board of Insurance adopts amendments to §§11.506-11.506, 11.508, and 11.509, without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1726).

The sections concern evidence of coverage by health maintenance organizations (HMOs). These amendments are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary to respond to the growing needs for health coverage for citizens of Texas by

providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

The amendments to §§11.501-11.505 modify and add to the required contents and other requirements and procedures for the filing and review of evidence of coverage forms. The amendment to §11.506 exempts from review portions of evidence of coverage forms that incorporate standard language for mandatory and other provisions. The amendments to §§11.506, 11.508, and 11.509 clarify and modify the required contents of certain mandatory and optional provisions of group and non-group agreements and group certificates.

No comments were received regarding adoption of the amendments.

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

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

Issued in Austin, Texas, on November 13, 1987

TRD-8710261 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 13, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327.

Subchapter G. Advertising and Sales Material

★ 28 TAC §§11.601, 11.603, 11.604

The State Board of Insurance adopts amendments to §§11.601, 11.603, and 11.604, without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1729).

The sections concern advertising and sales material of health maintenance organizations (HMOs). These amendments are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

These amendments clarify and modify required information and other requirements for filing and maintaining advertising and sales material by an HMO.

No comments were received regarding adoption of the amendments.

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

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

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

TRD-8710260 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 3, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327.

Subchapter H. Schedule of Charges

★ 28 TAC §§11.701, 11.705, 11.706

The State Board of Insurance adopts amendments to §§11.701, 11.705, and 11.706, without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1730).

The sections concern regulation of the schedule of charges by health maintenance organizations (HMOs). These amendments are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning health maintenance organizations (HMOs). The amendments and new sections are necessary to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

These amendments clarify and simplify requirements for filing schedules of charges and rate variations by HMOs.

No comments were received regarding adoption of the amendments.

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

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

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

TRD-8710259 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 3, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327

Subchapter I. Financial Requirements

★ 28 TAC §§11.802, §11.803

The State Board of Insurance adopts amendments to §11.802 and §11.803, without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1730).

The sections concern financial requirements for health maintenance organizations (HMOs). These amendments are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

These amendments modify references to deposits and assets by using more general language which will remain accurate through any statutory amendments concerning specific types of deposits or assets, and by deleting provisions for surety bonds.

No comments were received regarding adoption of the amendments

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

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

Issued in Austin, Texas, on November 13, 1987

TRD-8710258 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 3, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327

Subchapter K. Forms Adopted by Reference

★ 28 TAC §11.1001

The State Board of Insurance adopts an amendment to §11.1001, without changes to the proposed text published in the May

29, 1987, issue of the *Texas Register* (12 TexReg 1731).

The section concerns forms adopted by reference for use in regulation of health maintenance organizations (HMOs). This amendment is part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

The amendment provides forms for certifying corrections to an application by an HMO for a certificate of authority, for certifying compliance of documents with applicable law, and for certifying to use of approved language in printed forms to be used by an HMO.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on November 13, 1987
TRD-8710257 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 3, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327.



Subchapter L. Standard Language for Mandatory and Other Provisions

★ 28 TAC §11.1101, §11.1102

The State Board of Insurance adopts new §11.1101 and §11.1102, without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1732).

The sections concern standard language for mandatory and other provisions for health maintenance organizations (HMOs). These new sections are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for li-

censing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

The new sections specify mandatory language for hold-harmless clauses in documents filed by HMOs for approval under Chapter 11.

No comments were received regarding adoption of the new sections.

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

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

Issued in Austin, Texas, on November 13, 1987
TRD-8710256 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 3, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327.



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

★ 28 TAC §11.1201-11.1206

The State Board of Insurance adopts §§11.1201-11.1206 without changes to the proposed text published in the May 29, 1987, issue of the *Texas Register* (12 TexReg 1732).

The sections concern acquisition of, control of, or merger of, a health maintenance organization (HMOs). These new sections are part of a series of amendments to existing sections and adoptions of new sections to Chapter 11, concerning HMOs. The amendments and new sections are necessary in order to respond to the growing need for health coverage for citizens of Texas by providing more efficient and expeditious procedures for licensing and regulating HMOs which can effectively meet the needs for health coverage for many of these citizens.

The sections in this new Subchapter M prohibit acquisitions of, control of, or merger of, an HMO until after certain information is provided to the State Board of Insurance, to the HMO, and to the shareholders of the HMO in the required form and with the required documentation, and until after notice and hearing and approval by the Commissioner of Insurance.

No comments were received regarding adoption of the amendments.

These new sections are adopted under the Texas Health Maintenance Organization Act, §22, which authorizes the State Board of Insurance, after notice and hearing, to promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Act.

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

Issued in Austin, Texas, on November 13, 1987.
TRD-8710255 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 4, 1987
Proposal publication date: May 29, 1987
For further information, please call
(512) 463-6327.



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter B. Natural Gas Production Tax

★ 34 TAC §3.11

The Comptroller of Public Accounts adopts the repeal of §3.11, without changes to the proposed text published in the October 6, 1987, issue of the *Texas Register* (12 TexReg 3596).

The repeal allows for the adoption of a new section.

No comments were received regarding adoption of the repeal.

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

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 November 21, 1987.
TRD-8710160 Bob Bullock
Comptroller of Public Accounts

Effective date: December 3, 1987
Proposal publication date: October 6, 1987
For further information, please call
(512) 463-4004



The Comptroller of Public Accounts adopts new §3.11, with changes to the proposed text published in the October 6, 1987, issue of the *Texas Register* (12 Tex-Reg 3596).

The new section provides for a prepayment procedure that enables the taxpayer to avoid penalty and interest assessments for late filing. The new section will not limit the taxpayer to the current allowance.

The change limits the prepayment application to unpaid natural gas tax, penalty, and interest not involved in a redetermination hearing, and is contained in subsection (b)(7).

The following comments were received against adoption of the new section. Texas Mid-Continent Oil and Gas Association is opposed to the provisions of proposed subsection (b)(7), which would permit the comptroller to apply a prepayment to any tax, penalty, and interest existing in the taxpayer's account, including deficiencies other than natural gas severance tax. Subsection (b)(7) has been changed to limit the application to natural gas deficiencies not included in a redetermination hearing.

Another comment concerned subsection (b)(5). One member of the association preferred to designate the payment application and to issue separate checks for penalties and interest. The proposed prepayment procedure is optional. The taxpayer may pay tax, penalty, and interest as the amended reports are submitted. Multiple checks are acceptable.

The last comment suggested that the due date for the natural gas tax be extended to the 20th day of the third month. The comptroller believes that the existing due date provides taxpayers with ample time in which to prepare the report.

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

§3.11. *Penalty and Interest.*

(a) Imposition of tax, penalty, and interest.

(1) Penalty and interest will not apply to additional value resulting from retroactive price increases and retroactive adjustments to value provided the additional tax is remitted on or before the 20th day of the second month following the month in which such price or value was determined. The taxpayer has the burden of notifying the comptroller of any tax not subject to penalty and interest. If notification is not provided, the prepayment procedure, if applicable, will be followed.

(2) The gas purchaser will be held responsible for any tax, penalty, and interest accruing on gas taken by the purchaser whenever the proceeds are not disbursed to the interest owners, unless the producer is solely liable for the tax.

(b) Prepayment procedure.

(1) Any natural gas taxpayer may voluntarily prepay the amount of tax that may become due as the result of filing amended reports after the due date.

(2) If the prepayment is sufficient to cover the additional tax and the postmark for the prepayment is on or before the due date for the period being amended, no penalty and interest will be assessed.

(3) If the prepayment is insufficient to cover the additional tax, or if the prepayment postmark date is not timely, the prepayment will be applied in such a manner that the maximum amount of penalty and interest will be eliminated based upon account balances at that time.

(4) A prepayment will be applied only when a payment is received along with the amended report and only if the application would eliminate or reduce penalty and interest. A prepayment will not be automatically applied against penalty and interest. Any prepayment used will be replaced with the payment received with the amended reports. The replacement will then be available for use as a prepayment under the actual postmark date that it was sent to the comptroller.

(5) Any taxpayer electing to use the prepayment procedure may not designate the application of payments. The application will be made by the comptroller and will be made in such a manner that the maximum amount of penalty and interest will be eliminated based upon the balances at the time of receipt of the amended reports and payments.

(6) A prepayment will not automatically be applied against a liability reflected on an original report or against a liability established by audit of the taxpayer's records.

(7) The comptroller may apply a prepayment to any unpaid natural gas tax, penalty, and interest existing in the taxpayer's account, unless the deficiency is included in a redetermination hearing.

(8) A taxpayer may increase the amount of the prepayment at any time.

(9) A taxpayer may request a refund of the unused prepayment, or any part of it, at any time. The granting of the refund is subject to existing law and rules of the comptroller.

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 November 12, 1987.

TRD-8710161 Bob Bullock
Comptroller of Public
Accounts

Effective date: December 3, 1987
Proposal publication date: October 6, 1987
For further information, please call
(512) 463-4004.

Part VII. State Property Tax Board Chapter 153. Truth in Taxation Requirements

★34 TAC §153.1

The State Property Tax Board adopts new §153.1, with changes to the proposed text published in the August 14, 1987, issue of the *Texas Register* (12 TexReg 2674).

The agency is required by law to prescribe the form and wording of a notice of public hearing on a tax increase under the Tax Code, §26.06.

The new section prescribes the form and wording of the notice. The notice requires taxing units to present the information required by the Tax Code, §26.06(b)(2), in a tabular format beneath the information required by subsection (b)(1).

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §26.06, which provides the State Property Tax Board with the authority to prescribe the form and wording of a notice of public hearing under §26.06.

§153.1. *Notice of Public Hearing on Tax Increase.*

(a) Except as provided by subsection (b) of this section, a taxing unit that is required by the Tax Code, §26.06, to publish a notice of public hearing on a proposed tax increase shall employ the form and wording of model Form 26.06 in publishing the notice.

(b) Model Form 26.06 is adopted by reference. Copies may be obtained from the State Property Tax Board, P.O. Box 15900, Austin, Texas 78761.

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 November 10, 1987.

TRD-8710176 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 14, 1987
For further information, please call
(512) 834-4802.

★34 TAC §153.2

The State Property Tax Board adopts new §153.2 with changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3474).

The Tax Code §26.04, as amended by House Bill 1866, effective January 1, 1988, requires the board to prescribe the form and content of the notice of a taxing unit's effective and rollback tax rates.

The new section prescribes the format and wording for the notice that a taxing

unit must publish stating is effective and rollback tax. A model form is adopted by reference. The change to the section deletes language barring taxing units from combining information for more than one unit in a single notice.

The new section deletes the objectionable provision. An individual commented that the proposal to bar units from combining notices would create financial hardship.

The new section is adopted under the Tax Code, §26.04, as amended by House Bill 1866, effective January 1, 1988, which provides the State Property Tax Board with the authority to prescribe the form and wording for notice of a taxing unit's effective and rollback tax rate.

§153.2. Notice of Effective and Rollback Tax Rates.

(a) A taxing unit shall employ the form and wording of Model Form 26.04 in publishing the notice of effective tax rate and other information required to be published by the Tax Code, §26.04(e). A county may modify the model form by inserting additional columns of effective and rollback rate calculations for each type of tax the county levies. A form so modified must also state the total effective and rollback tax rates for the county.

(b) The type size employed in the notice may not be smaller than eight points.

(c) Notices for taxing units may be combined, provided each meets the requirements of subsection (b) of this section.

(d) Model Form 26.04 is adopted by reference. Copies may be obtained from the State Property Tax Board, 9501 North IH-35, P.O. Box 15900, Austin, Texas 78761-5900.

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 November 10, 1987.

TRD-8710177 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: September 29, 1987
For further information, please call
(512) 834-4802.



Chapter 155. Tax Record Requirements

★34 TAC §155.6

The State Property Tax Board adopts an amendment to §155.6, without changes to the proposed text published in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3035).

Senate Bill 21, effective January 1, 1988, permits persons who own shares in co-

operative housing corporations to apply for residence homestead exemptions. The amendment incorporates a new residence homestead exemption form reflecting the change.

The amendment adopts by reference a new application form for residence homestead exemption. The form requests an applicant to indicate whether he or she owns shares in a cooperative housing corporation entitling the applicant to occupy the property for which he or she requests the exemption.

No comments were received regarding adoption of the amendment.

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

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 November 10, 1987.

TRD-8710184 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: September 4, 1987
For further information, please call
(512) 834-4802.



★34 TAC §155.17

The State Property Tax Board adopts an amendment to 155.17 without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2849).

The amendment reflects the changes made by House Bill 1066, effective January 1, 1988, to charitable organization property tax exemption requirements.

The section adopts a new charitable organization exemption form by reference.

No comments were received regarding adoption of the amendment.

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

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 November 10, 1987.

TRD-8710186 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802



★34 TAC §155.19

The State Property Tax Board adopts an amendment to §155.19, without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2850).

The amendment reflects the changes made by House Bill 2213, effective since August 31, 1987, to religious organization property tax exemption requirements.

The section adopts a new religious organization exemption form by reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §11.43(f), which provides the State Property Tax Board with the authority to prescribe the contents and form for each kind of property tax exemption.

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 November 10, 1987.

TRD-8710178 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.



★34 TAC §155.37

The State Property Tax Board adopts an amendment to §155.37, without changes to the proposed text published in the July 21, 1987, issue of the *Texas Register* (12 TexReg 2372).

Senate Bill 83, effective since May 1, 1987, requires tax collectors to issue tax receipts upon request and directs the board to prescribe the method of describing property on the receipt.

The amendment requires that a receipt carry the tax roll description of the property, the tax office account number for the property, and the appraisal office account number, if different.

No comments were received regarding adoption of the amendment.

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

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 November 10, 1987.

TRD-8710182 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: July 21, 1987
For further information, please call
(512) 834-4802



★ 34 TAC §155.43

The State Property Tax Board adopts new §155.43 with changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2850).

The new section requires collectors to issue temporary tax receipts for payments of taxes made under protest and conditional payments of taxes. The new section also requires the collector to issue upon request a receipt for a partial payment of taxes showing the amount paid and the amount still owing.

Collectors will be required to issue receipts for conditional payments of taxes by the Tax Code, §31.071, effective since August 31, 1987. The Tax Code, §31.075, requires them to issue tax receipts generally upon request.

No comments were received regarding adoption of the new section.

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

§155.43. *Temporary Tax Receipts.*

(a) In this section:

(1) payment of taxes under protest means a payment:

(A) required by the Tax Code, §42.08, to preserve a property owner's right to proceed to a final determination of an appraisal appeal;

(B) required by the Tax Code, §25.25(e), to preserve a property owner's right to a final determination of a joint motion alleging a substantial error on the appraisal roll;

(C) required by the Tax Code, §41.411(c), to preserve a property owner's right to a final determination of a protest of failure to give notice;

(2) conditional payment of taxes means a payment of the amount that the Tax Code, §31.071, permits a property owner to pay while his property is subject to a pending protest or challenge;

(3) partial payment of taxes means a payment, other than a payment of taxes under protest or a conditional payment of

taxes, that is less than the full amount of current taxes due.

(b) A collector shall accept a payment under protest or conditional payment of taxes at any time after the unit has delivered substantially all its tax bills for the year, provided the taxpayer clearly indicates that a payment is made under protest or is a conditional payment. A collector shall accept partial payments of taxes if the collector has adopted a policy of accepting partial payments with the approval of the taxing unit's governing body or if the taxing unit has provided for split payment of taxes.

(c) A collector shall issue a receipt for a conditional payment of taxes, whether or not the taxpayer requests one. A collector shall issue a receipt for a payment of taxes under protest or a partial payment of taxes upon request of a taxpayer.

(d) A receipt for a conditional payment of taxes or a payment of taxes under protest must state that the receipt is temporary pending the determination of final tax liability and that a permanent receipt will be issued when the amount finally determined to be due is paid. After the final determination of a protest, challenge, or appeal and payment of any additional tax, the collector shall issue a permanent receipt.

(e) A receipt for a partial payment of taxes must state that the receipt is for a partial payment only and must note the amount of taxes still due.

(f) Except as required by this section, a receipt for a payment of taxes must conform to the requirements of §155.37 of this title (relating to Current and Delinquent Tax Receipts).

(g) If the tax collector reasonably believes that the amount of tax tendered is not the amount required to preserve an appeal under the Tax Code, §42.08, the collector shall notify the appraisal district of the deficiency as soon as possible.

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 November 10, 1987.

TRD-8710190 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.



★ 34 TAC §155.51

The State Property Tax Board adopts an amendment to §155.51, without changes to the proposed text published in the September 18, 1987, issue of the *Texas Register* (12 TexReg 3261).

Legislative changes have made the board's model forms for cemetery and miscellaneous exemptions obsolete.

The amendment adopts by reference two new model exemption forms affected by legislative changes. The new model form indicates that it need not be filed annually. The miscellaneous exemption form reflects the repeal of the exemption under the Tax Code, §11.23(b), for biomedical research institutions and the addition of an exemption for scientific research organizations.

No comments were received regarding adoption of the amendment.

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

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 November 10, 1987

TRD-8710194 Ron Patterson
Executive Director
State Property Tax

Effective date: December 3, 1987
Proposal publication date: September 18, 1987
For further information, please call
(512) 834-4802



★ 34 TAC §155.52

The State Property Tax Board adopts new §155.52, without changes to the proposed text published in the September 4, 1987, issue of the *Texas Register* (12 TexReg 3035).

Senate Bill 21, effective January 1, 1988, sets up a procedure for cooperative housing corporations to request separate appraisal of individual housing units. The new section adopts a form for the request.

The new section adopts by reference a new request form that cooperative housing associations may use to apply for separate appraisal.

No comments were received regarding adoption of the new section.

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

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 November 10, 1987.

TRD-8710185 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: September 4, 1987
For further information, please call
(512) 834-4802.

Chapter 157. Tax Assessor Training and Education

★34 TAC §157.2

The State Property Tax Board adopts the repeal of §157.2, without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2857).

The repeal is adopted concurrently with new §§157.21-157.25, which supersede the repealed section.

The repeal deletes obsolete requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §5.04, which provides the State Property Tax Board with the authority to conduct, sponsor, and approve courses of instruction in property tax matters.

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 November 10, 1987.

TRD-8710192 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.



★34 TAC §§157.21-157.25

The State Property Tax Board adopts new §§157.21-157.25. Section 157.25 is adopted with changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2857). Sections 157.21-157.24 are adopted without changes and will not be republished.

The new sections replace concurrently repealed §157.2. The repealed section has been in effect since 1982. The board's education program imposes stricter standards than were imposed at the time the repealed section was adopted, making it more likely that a denial of instructor approval would be appealed to the board. The new sections set up an appeals procedure and otherwise update the sections to reflect the scope of the board's education activities.

The new sections describe the scope of the board's education program, specify criteria that may be used in approving qualified instructors to teach the board's courses, define a procedure for approving courses of instruction, and provide an administrative hearings procedure that may be used to protest denial of approval as an instructor, withdrawal of approval as an instructor, or the denial of a course approval.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Tax Code, §5.04, which provides the State Property Tax Board with the authority to conduct, sponsor, and approve courses of instruction in property tax matters.

§157.25. Protest Procedure.

(a) An individual who is denied approval as an instructor, an instructor whose approval is withdrawn, or a person, governmental entity, or organization that is denied course approval may protest by filing a petition within 15 days after the date the person receives notice of denial or withdrawal. A protest of the board's failure to approve a course of instruction may not raise an issue relating to the approval of an individual as an instructor.

(b) On receiving a protest, the executive director shall determine whether the petition raises an issue that is within the jurisdiction of the board. The director shall notify the petitioner of the date, time, and place fixed for a hearing. The notice must be delivered no later than 10 days before the date of the hearing, and must be delivered by certified mail.

(c) The board or its designee shall convene a hearing on the protest. The petitioner and executive director may present evidence and argument at the hearing. The board or its designee shall establish the order of proceeding and is responsible for closing the record.

(d) The board or its designee shall prepare a decision within 15 days after the date the record is closed. The decision must contain a statement of the reasons for the decision and of each finding of fact necessary to the decision. The executive director shall deliver the decision to the petitioner by certified mail.

(e) If the board's designee conducts a hearing, within 15 days after the date a petitioner receives the decision, a petitioner or the executive director may file a written appeal to the board asking that the decision be overturned. If the director files the appeal, he shall deliver written notice by certified mail to the petitioner. The board shall convene to hear all timely-filed appeals. The executive director shall deliver notice of the date, time, and place fixed for the appeal. The notice must be delivered no later than 10 days before the date of the appeal hearing. An appeal is limited to the record made during the hearing conducted by the board's designee. The board shall determine an appeal and shall deliver notice of its decision and a copy of its order to the petitioner.

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 November 10, 1987.

TRD-8710193 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.



Chapter 161. Valuation Procedures

★34 TAC §§161.3, 161.6, 161.7

The State Property Tax Board adopts amendments to §§161.3, 161.6, and 161.7 without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2853).

House Bill 485 repealed the tax on motor and bus carrier intangible property. The amendments conform the sections to the new law.

The amendments delete obsolete language and revise the sections to make them easier to read and understand.

No comments were received regarding adoption of the amendments.

The amendments are adopted under House Bill 485 (70th Legislature, 1987), which deletes the State Property Tax Board's authority to appraise the intangible value of bus and motor carrier companies.

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 November 10, 1987.

TRD-8710188 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.



★34 TAC §161.8

The State Property Tax Board adopts the repeal of §161.8 without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2854).

Concurrent with the repeal, the agency adopts new §§161.21-161.25, which wholly revise the information contained in the repealed section. The sections provide guidelines for allocating the value of property used in interstate commerce.

The repeal of the section deletes obsolete requirements.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §5.03, which provides the State Property Tax Board with the authority to adopt rules establishing minimum standards for the administration of appraisal districts.

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 November 10, 1987.

TRD-8710187 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802



★ 34 TAC §§161.21-161.25

The State Property Tax Board adopts new §§161.21-161.25 with changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 Tex-Reg 2854).

In *Texas Gulf Shrimp Company v. Aransas County Appraisal Review Board*, 707 S.W.2d 186 (Tex. App.—Corpus Christi, 1984 writ ref'd n.r.e.), the court declared the Tax Code, §21.03, which provides for allocation of the value of equipment used in interstate commerce, unconstitutional. The new sections set out new guidelines for allocation in accordance with the court's ruling.

The sections define terms, set out eligibility guidelines, and adopt by reference a new rendition form for equipment and instrumentalities used in interstate commerce.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Tax Code, §5.03, which provides the State Property Tax Board with the authority to adopt rules establishing minimum standards for the administration of appraisal districts.

§161.21. Allocation of Value for Property Used in Interstate and Foreign Commerce.

(a) The chief appraiser shall allocate the market value of that property used in interstate or foreign commerce that qualifies for allocation under this section.

(b) Property qualifies for allocation if it:

- (1) constitutes a commercial instrument or commercial equipment;
- (2) is used for a business purpose;
- (3) has taxable situs in a taxing unit within the appraisal district as provided by the Property Tax Code, §21.02 or §21.021; and
- (4) is used continually outside Texas in interstate or foreign commerce, whether regularly or irregularly.

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

(1) Commercial instrument or commercial equipment—Tangible personal prop-

erty used for a business purpose, which includes, but is not limited to, aircraft, rolling stock not owned or leased by a railroad, motor vehicles, shipping containers, vessels and watercraft (except for special purpose vessels and watercraft used as an instrumentality of commerce as defined in the Property Tax Code, §21.031), mobile construction or drilling equipment, and mobile equipment of any other sort. The term does not include goods, wares, ores, or merchandise held for sale or resale, stored, warehoused, or in the process of assembly, manufacture, or refinement on January 1.

(2) Jurisdiction to tax—The legal power to levy a property tax on a property, regardless of whether the power to tax is exercised.

(3) Situs jurisdiction—A taxing unit, state, or nation that has jurisdiction to tax a property because of the property's location or use, or because of the owner's domicile or principal place of business.

(4) Used continually—Used several times on regular routes or for several tasks in close succession throughout the year.

(d) A commercial instrument or item of business equipment is present in the state for more than a temporary period if:

(1) its owner maintains one or more places of business in this state and the property is present in this state on January 1 or at any time during the 12 months preceding January 1;

(2) the property has contact with this state of a character that would permit this state to tax it under applicable federal law.

§161.22. Application for Allocation of Value.

(a) A property owner who is entitled to an allocation of property must file a rendition form that provides enough information necessary to prove the entitlement to allocation and permit the chief appraiser to apply an allocation formula appropriate to the subject property.

(b) An appraisal district may use a rendition form that substantially complies with the appropriate State Property Tax Board allocation-rendition form. Each form shall require the property owner to identify the property that is the subject of the rendition and provide information measuring the use of the property within Texas and within other states or nations. The form must permit the property owner to state an opinion of the total market value of the property and the amount of value that should be allocated to each taxing unit in which the property has situs.

(c) Model Rendition Form 21.03 is adopted by reference.

§161.23. Guidelines for Determination of Jurisdiction to Tax.

(a) The chief appraiser shall determine whether property is within the taxing jurisdiction of another state or nation from the evidence supplied by the property owner.

The burden of proof in establishing such jurisdiction is upon the property owner.

(b) The State of Texas has jurisdiction to tax property if:

(1) it is physically present within the State of Texas on January 1 for more than a temporary period;

(2) it has been used continually in Texas during the 12 months preceding January 1, regardless of its location on January 1; or

(3) its owner resides or does business in Texas and the property is outside Texas for a temporary period on January 1.

(c) Property is within the jurisdiction to tax of another state or nation if:

(1) it is physically present within that state or nation's boundaries on the state or nation's property tax lien date for more than a temporary period;

(2) it has been used continually in the state or nation during the 12 months preceding January 1, regardless of its location on January 1;

(3) its owner resides or does business in that state or nation and the property is outside that state or nation for temporary period on January 1;

(4) the state or nation has in fact assessed a property tax against the property.

(d) Property is neither physically present nor used in a jurisdiction when it flies over the jurisdiction without landing.

(e) Property that leaves the boundaries of this state, and returns without being exposed to the taxing jurisdiction of another state or nation remains within the state's taxing jurisdiction for the duration of the trip.

(f) Property is not within the jurisdiction to tax of this state or any other state of the United States:

(1) if it is an instrumentality of commerce;

(2) it is owned by a foreign domiciliary;

(3) it is taxed in the nation where its owner is domiciled;

(4) it is used exclusively in foreign commerce; and

(5) it is not present in this state for more than a temporary period on January 1.

(g) The chief appraiser may consider the following evidence in determining where a property has taxable situs:

(1) published schedules, if the property carries passengers and/or cargo on regular routes at regular times;

(2) records kept in the normal course of business, such as mileage, flight, or vessel logs, that indicate where the property has travelled, how long it was located at each destination, and the purpose of its location at each destination;

(3) reports filed with state or national agencies that indicate where the property has travelled, how long it was located at each destination, and the purpose of its location at each destination; and

(4) actual tax bills or notices of appraisal or assessment from other jurisdictions.

§161.24. Allocation of Value.

(a) If the chief appraiser determines that the property was within the taxing jurisdiction of this state and within the taxing jurisdiction of another state or nation for the same calendar year, he shall allocate to each taxing unit in which the property has situs the portion of the property's market value that fairly reflects its use in this state.

(b) For aircraft property, the chief appraiser shall use an allocation formula based on time. The ratio of days or hours the aircraft spends on the ground and in the air in Texas to days or hours spent on the ground and in the air in all situs jurisdictions is the allocation ratio. Time spent in the air or on the ground within the boundaries of states or nations that do not have jurisdiction to tax the property is not included in the denominator of the allocation ratio.

(c) For vessels, the chief appraiser will normally use an allocation formula based on port days. The ratio of the days the vessel spends in port in Texas to total days spent in port in all situs jurisdictions is the allocation ratio.

(d) For motor vehicles and rolling stock, not including vessels or aircraft, the chief appraiser will normally use an allocation formula based on mileage. The ratio of total miles travelled in Texas during the year to the total miles travelled in all situs jurisdictions during the year is the allocation ratio.

(e) For other equipment, the chief appraiser will normally use an allocation formula based on time. The ratio of time spent in Texas during the year to the total time spent in all situs jurisdictions during the year is the allocation ratio.

(f) If an allocation formula specified in this section does not fairly reflect the use of the property in this state and other situs jurisdictions, the chief appraiser may use another formula that more adequately reflects use. Such alternate formulas may include revenue-ton miles, equipment load factors, or other measures of property use.

§161.25. Action on Applications.

(a) If the appraisal office allocates the value of property in a given year, the chief appraiser shall note on the property's appraisal record for the year;

- (1) that the allocation has been granted;
- (2) the market value of the property;
- (3) the allocation formula factor; and
- (4) the appraised value of the property after allocation.

(b) The chief appraiser shall retain a record of the allocation for three years after it is granted, including:

- (1) the rendition form requesting allocation;
- (2) supporting documents filed by

the property owner; and

(3) the formula chosen and calculations used in making the allocation.

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 November 10, 1987.

TRD-8710179 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.

Chapter 163. Reporting Procedures

★ 34 TAC §163.7

The State Property Tax Board adopts the repeal of §163.7, without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 Tex-Reg 2857).

House Bill 1745, 70th Legislature, effective January 1, 1988, repeals the Tax Code provisions under which this section was adopted.

The repeal deletes an obsolete requirement.

No comments were received regarding adoption of the repeal.

The repeal is adopted under House Bill 1745, 70th Legislature, 1987, which repeals the State Property Tax Board's authority to prescribe forms for submitting a listing of state owned property to the board.

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 November 10, 1987.

TRD-8710191 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.

Chapter 165. Practice and Procedure

★ 34 TAC §165.71 and 165.73

The State Property Tax Board adopts amendments to §165.71 and §165.73 without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2857).

The Education Code, §11.86, permits a school district to protest before certifica-

tion and request an audit after certification of the agency's determination of its market value. The amendments reflect legislative changes and refine the procedures.

Section 165.71 describes the issues that may be raised in an audit of the board's final findings. Section 165.73 describes the methods of filing a protest and the contents of a protest petition. The amendments establish a process for incorporating changes to a school district's annual report of property value into the board's estimates of taxable value. A protest of the board's preliminary findings may be based upon error in the self-reported value. Errors in the self-report discovered after the deadline has passed for filing a protest and evidence (usually about March 1) must be processed through an audit request after the conclusion of the board's hearings.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Education Code, §11.86, which provides the State Property Tax Board with the authority to adopt procedural rules governing the conduct of protest hearings.

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 November 10, 1987.

TRD-8710180 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.

★ 34 TAC §§165.101-165.107

The State Property Tax Board adopts new §§165.101-165.107. Section 165.101 is adopted with changes to the proposed text as published in the September 29, 1987, issue of the *Texas Register* (12 Tex-Reg 3474). Sections 165.102-165.107 are adopted without changes and will not be republished.

The sections set up procedures to implement the provisions of House Bill 324, which requires the State Property Tax Board to conduct performance audits of appraisal districts upon request, beginning January 1, 1988.

The sections detail administrative procedures including how a performance audit is requested, prehearing conferences, modification of the request, the report, and discontinuation of the audit. The changes to §165.101 specify that matters properly within the jurisdiction of the appraisal review board would not be the sub-

ject of an audit and delete language that authorized an audit of the preceding year

Individual commenters requested the deletion of language permitting audits of prior years, the addition of language permitting audits of at least three preceding years, and the addition of a provision requiring notice to the affected appraisal district when an audit request is received.

The agency believes the law does not contemplate a performance audit of prior years.

The new sections are adopted under the Tax Code, §5.12, which provides the State Property Tax Board with the authority to adopt procedures, audit standards, and forms for the administration of performance audits.

§165.101. Procedures for Request of Performance Audit.

(a) The following parties may request a performance audit of an appraisal district under this section as provided by the Property Tax Code, §5.12:

(1) the governing bodies of a majority of the taxing units participating in an appraisal district;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors;

(3) the owners of not less than 10% of the number of accounts or the owners of not less than 10% of the number of parcels of property in an appraisal district belonging to a class of property established by the State Property Tax Board for purposes of the study conducted under the Education Code, §11.86, if the class constitutes at least 5.0% of the appraised value of taxable property within the district in the preceding year; or

(4) the owners of property representing not less than 10% of the appraised value of all property in the district belonging to a class of property established for purposes of the study conducted by the board under the Education Code, §11.86, if the class constitutes at least 5.0% of the appraised value of taxable property in the district in the preceding year.

(b) A performance audit must be requested in writing on a State Property Tax Board form. Taxing units must use State Property Tax Board Form 5.12a. Property owners must use State Property Tax Board Form 5.12b. State Property Tax Forms 5.12(a) and (b) are adopted by reference.

(c) A request for a performance audit must contain the following information:

(1) a request from taxing units must include the name and original signature of the presiding officer of each requesting unit and a copy of the resolution or other evidence of official action that authorizes the request;

(2) a request from property owners must include the name and original signature of each requesting property owner, the ac-

count or parcel number(s) of the owner's property, and the appraised value of the property the preceding tax year.

(3) the name of the appraisal district that is the subject of the request;

(4) information showing that the parties to the request meet all requirements for requesting a performance audit established by the Property Tax Code, §5.12(a) and (b);

(5) whether the performance audit requested is a general audit or is to be limited to one or more specific areas of performance, and identifying the specific areas; and

(6) the designation of an individual as the sole representative of all parties to the request for performance audit. All matters pertaining to the audit and requiring communications or transactions between the board and the parties making the request will be directed by the board to the requesting parties through the designated representative.

(d) A general audit shall consider and report on the following areas of performance:

(1) the extent to which the district complies with applicable law or generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviations from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by subsection (e) of this section, any other matter included in the request for the audit.

(e) Parties may not request an audit of:

(1) the financial condition of the appraisal district;

(2) an appraisal district's tax collections;

(3) an appraisal district function that is not required of the appraisal district by the Property Tax Code, the Education Code, or other laws of the state of Texas;

(4) a function the appraisal district performs under interlocal contract or pursuant to a consolidation election held under the Tax Code, §6.26;

(5) an action of an individual not directly related to the performance of the appraisal district;

(6) an alleged criminal act or act of official misconduct as defined in the Penal Code;

(7) the value of a particular property, the grant, or denial of an exemption in a particular case, the grant or denial of special appraisal to a particular property, the situs of a particular property, or similar matters involving individual properties that are properly in the jurisdiction of the appraisal

review board;

(8) an issue other than the level of appraisal or degree of uniformity of a category of property or of all property in the appraisal district that is directly involved in litigation; or

(9) a matter that involves actions or determinations in any year earlier than the year of the request.

(f) The executive director shall approve all requests for performance audits meeting the requirements set forth within this section.

(g) The executive director shall disapprove those request for performance audits that do not meet the requirements of this section and those portions of requests for performance audits containing requests to audit any of the areas listed within subsection (e) of this section.

(h) For purposes of this chapter the property value study conducted by the board under the Education Code, §11.86, and the Property Tax Code, §5.10, is a performance audit on a matter of uniformity and level of appraisal of property in an appraisal district.

(i) The executive director shall send written notice of an audit request to the presiding officer of the appraisal district board of directors and to the chief appraiser within seven days after receipt of the request.

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 November 10, 1987.

TRD-8710181

Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987

Proposal publication date: September 29, 1987

For further information, please call
(512) 834-4802.

★ 34 TAC §165.141

The State Property Tax Board adopts an amendment to §165.141 without changes to the proposed text published in the July 21, 1987, issue of the *Texas Register* (12 TexReg 2373).

Senate Bill 751, 70th Legislature, 1987, requires notices of appraisal review board orders to carry a statement of appeal rights. The amendment promulgates a uniform statement that is concise and readily understandable.

The amendment prescribes language for a notice of appeal rights that under new legislation must be added to all notices of appraisal review board orders that determine taxpayer protests. The notice must state the property owner's right to appeal, the requirement of filing a notice of intent to appeal within 15 days, and the requirement that an appeal petition must be filed within 45 days. The new informa-

tion is required by Senate Bill 751, 70th Legislature, 1987.

No comments were received regarding adoption of the amendment.

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

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 November 10, 1987.

TRD-8710189 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: July 21, 1987
For further information, please call
(512) 834-4802.



★ 34 TAC §165.142

The State Property Tax Board adopts an amendment to §165.142 without changes to the proposed text published in the August 25, 1987, issue of the *Texas Register* (12 TexReg 2858). Changes have been made to the model form adopted by reference in the section.

Legislative changes require changes to the deadline stated of the notice of protest form promulgated by the agency.

Section 165.142 sets out the contents of a form that may be used in filing a protest with an appraisal review board. Beginning January 1, 1988, the amendment requires the application to indicate a filing deadline before June 1. The Tax Code, §41.44, as amended by Senate Bill 618, 70th Legislature, 1987, changed the filing deadline for a notice of protest proposal. The revised model form states the new deadline and incorporates three changes suggested by individuals: optional blocks for the property owner to indicate the account number of the property and the owner's opinion of the property value and clarification that the property owner's name and address must be given.

Comments by individuals on the original proposal requested additional blocks to indicate property account numbers and the owner's opinion of the properties value. They also requested that the caption on the block "name and address" be changed to "property owner's name and address."

The model form adopted incorporates all requested changes.

The amendments are adopted under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

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 November 10, 1987.

TRD-8710183 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 3, 1987
Proposal publication date: August 25, 1987
For further information, please call
(512) 834-4802.

State Board of Insurance Exempt Filings

State Board of Insurance Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved the amendment to Part Six-Conditions, D., 3 of the Amendment Endorsement-WC 42 03 01 thereby revising the cancellation or nonrenewal provisions of the basic Workers' Compensation policy in order to be in compliance with Texas Civil Statutes, Article 8308, §20a. The change in the section stated above requires 30 days advance notice for cancellation or nonrenewal ex-

cept for the four specific reasons that require 10 days advance notice of cancellation or nonrenewal.

The board finds a clear and compelling necessity for this action to be adopted 12:01 a.m. on the day following notice of such action filed with the Secretary of State for publication in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on November 10, 1987.

TRD-8710130 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 20, 1988
For further information, please call
(512) 463-6327.



The State Board of Insurance has approved revision of the Texas property statistical plan for residential and commercial risks. The proposed revision provides statistical coding to facilitate collection of commercial statistics on the Texas commercial package policy and Texas business owners policy.

The Insurance Code, Article 5.05(a), authorizes the State Board of Insurance to collect data with the respect to the recording of its loss experience and such other data as may be required. The Insurance Code, Article 5.96, authorizes the State Board of Insurance to adopt amendments to the statistical plan under the procedure specified in that article.

This revised Texas property statistical plan for residential and commercial risks will be effective 15 days after publication in the *Texas Register*, and is applicable to all property insurance companies reporting data under this plan.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on November 10, 1987.

TRD-8710129 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: November 26, 1987
For further information, please call
(512) 463-6327.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *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*.

State Bar of Texas

Thursday, November 19, 1987, 9 a.m. The Executive Committee of the State Bar of Texas met in emergency session in Room 206-207, Texas Law Center, 1414 Colorado, Austin. According to the agenda summary, the committee heard reports of board chairman, president, executive director, general counsel, president-elect, TYLA president, and supreme court liaison. The emergency status was necessary because the meeting was to be posted on November 11, 1987, a holiday. It was tendered on November 12, 1987, and rejected by the Secretary of State, Texas Register Division.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: November 12, 1987, 4:24 p.m.
TRD-8710175



Texas Commission for the Blind

Tuesday, November 24, 1987, 10 a.m. The Texas Commission for the Blind will meet in the Criss Cole Rehabilitation Center Auditorium, 4800 North Lamar Boulevard, Austin. According to the agenda, the commission will approve minutes of the previous meeting; hear reports of the executive director and discussion, consider proposed changes to rules governing vocational rehabilitation program, proposed changes to rules governing visually handicapped children's program; discuss and act on proposed memorandum of agreement with Texas Department of Corrections, and discuss employer of the year nominations. The commission will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(e) and §2(g) to discuss personnel and pending legal matters.

Contact: Pat D. Westbrook, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: November 13, 1987, 3:15 p.m.
TRD-8710250



Texas Department of Commerce

Monday, November 16, 1987, 10 a.m. The Board of Directors of the Texas Department of Commerce made an emergency agenda revision to a meeting held in Room 221, Anson Jones Office Building, 410 East Fifth Street, Austin. According to the agenda, the board approved minutes of the previous meeting; considered proclamation on Galveston's Moody Gardens and resolution authorizing the establishment of a special fund; reviewed Texas Small Business Industry Development Program; heard a report on Texas Department of Community Affairs transition; and considered Texas Economic Development Foundation ground rules. The board met in executive session pursuant to Texas Civil Statutes, Article 6252-17 as amended to discuss personnel matters. The emergency status was necessary because establishment of special fund will take place on November 16 and the next board meeting will not take place until December 14, 1987.

Contact: Alexa Richter, 410 East Fifth Street, Austin, Texas 78701, (512) 472-5059.

Filed: November 12, 1987, Noon.
TRD-8710141



Texas Cosmetology Commission

Sunday, November 22, 1987, 10 a.m. The Operator Examination Committee of the Texas Cosmetology Commission will meet in Embassy Suites Hotel, 6100 Gateway East, El Paso. According to the agenda, the committee will hear committee reports, consider revision of written exams, and present certificates.

Contact: Janis Rebold, 1111 Rio Grande, Austin, Texas 78705, (512) 463-3183.

Filed: November 13, 1987, 1:55 p.m.
TRD-8710248

Monday, November 23, 1987, 9:30 a.m. The Texas Cosmetology Commission will meet in Embassy Suites Hotel, 6100 Gateway, El Paso. According to the agenda, the commis-

sion will introduce the new executive director; hear minutes of the last meeting, and committee reports on continuing education, inspector oversight, legislative, operator curriculum, operator examination, rules revision, new building, and staff oversight; hear reports from the outgoing interim executive director, incoming executive director, director of inspections, director of examinations, and commission chairman; and discuss inspector training manual and personnel handbook. The commission also will meet in executive session.

Contact: Janis Rebold, 1111 Rio Grande, Austin, Texas 78705, (512) 463-3183.

Filed: November 13, 1987, 1:54 p.m.
TRD-8710247



Texas Commission for the Deaf

Saturday, November 21, 1987, 9 a.m. The Board for Evaluation of Interpreters of the Texas Commission for the Deaf will meet in the Basement Conference Room, 510 South Congress Avenue, Austin. According to the agenda, the board will approve previous meeting minutes; discuss goals and objectives; consider TRC/TEA communication competency assessment; and hear the chairperson's report. The board also will meet in executive session to review certificate recommendations, evaluations, and revocations.

Contact: Larry D. Evans, P.O. Box 12904, Austin, Texas 78711, (512) 469-9891.

Filed: November 13, 1987, 9:25 a.m.
TRD-8710202



Texas Education Agency

Friday, November 13, 1987, 8:30 a.m. The Committee for Students of the State Board of Education made an emergency agenda revision to a meeting held in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee heard a status report on development of rules for compensatory

education. The emergency status was necessary to ensure that the committee had an opportunity to discuss the development of rules for compensatory education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 12, 1987, 1:36 p.m.
TRD-8710150

Wednesday, December 2, 1987, 9 a.m. The Advisory Committee for Budgeting, Accounting, and Auditing will meet in Suite 415, Texas Association of School Business Officials Boardroom, 1401 Directors Boulevard, Austin. According to the agenda, the committee will hear a presentation on compensatory education white paper and presentation on development of management audit for public school districts; and discuss proposed change 21 to bulletin 679, Financial Accounting Manual.

Contact: Ed Randall, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9095.

Filed: November 12, 1987, 1:37 p.m.
TRD-8710149

Texas Employment Commission

Monday, November 23, 1987, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; consider internal procedures of commission appeals, action on higher level appeals in unemployment compensation cases on Commission Docket 47, and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: November 13, 1987, 3:51 p.m.
TRD-8710253

Employees Retirement System of Texas

Tuesday, November 24, 1987, 9 a.m. The Board of Trustees for the Employees Retirement System of Texas will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda, the board will review and approve board minutes; consider and act on Group Insurance Advisory Committee recommendation; consider and act on final adoption of proposed amendment to §73.21(d) and §71.5 of trustee rules; consider and act on emergency and proposed amendment to §81.3(c)(2)(D) of trustee rules; consider and act on adjusting the amount in the retirement annuity reserve account; hear the status report on state auditor's management letters; discuss information system plan; hear the executive director's report; and set the date of the next trustee meeting. The board

also will meet in executive session and discuss any action resulting from that meeting.

Contact: James T. Herod, 18th and Brazos Streets, Austin, Texas 78705, (512) 476-6431.

Filed: November 16, 1987, 8:42 a.m.
TRD-8710271

Texas Department of Health

Saturday, November 21, 1987, 9:30 a.m. The Cardiovascular Advisory Committee of the Texas Department of Health will meet in the First Floor Conference Room, 1101 East Anderson Lane, Austin. According to the agenda summary, the committee will approve minutes of September meeting; review site visit; consider Children's Medical Center, site visit review forms, scheduling future site visits; board actions from October/November meeting, concerning guidelines on cardiovascular centers, annual reporting form, site visit/recommendation on Texas Children's Hospital, Children's Heart Institute of Texas, and Crippled Children's Services Program (CCSP), provider workshop, medical center hospital six month reporting forms, Cardiology Task Force on CCSP medical coverage update, other items for discussion, and proposed meeting dates and review of next meeting's agenda.

Contact: Janet S. Barkley-Booher, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2666.

Filed: November 12, 1987, 4:04 p.m.
TRD-8710168

Texas Historical Commission

Tuesday, December 1, 1987, 10 a.m. The Division of Architecture of the Texas Historical Commission will meet in Room 107, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the division will discuss grant rankings and methods of evaluation for the Texas Historical Preservation Grant Program.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: November 16, 1987, 11:24 a.m.
TRD-8710287

Tuesday, December 1, 1987, 1:30 p.m. The Division of Architecture of the Texas Historical Commission will meet in the Carrington-Covert House Library, 1511 Colorado Street, Austin. According to the agenda, the division will discuss grant rankings and make grant allocations for the 1988 Texas Historical Preservation Grant Program.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: November 16, 1987, 11:24 a.m.
TRD-8710288

University of Houston System

Wednesday, November 18, 1987, 4:30 p.m. The Board of Regents of the University of Houston System met in Room 22, Petroleum Training Institute, University of Houston, Victoria. According to the agenda summary, the board received reports from Michael O'Connor, Stanley E. Wills, Jeff Beicker, Carlisle Maxwell, Jr., Sylvia Mergeler Vardell and Glenn A. Goerke.

Contact: Micheal T. Johnson, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: November 13, 1987, 10:41 a.m.
TRD-8710212

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

November 23, 1987, 10 a.m. The board will meet in Room 414, to consider Docket 1561—Appeal by Hoda Ishak Boutros, M.D., from action of the Texas Medical Liability Insurance Underwriters Association (the JUA) and public hearing thereon concerning the JUA's declining to reinstate policy JUA E 02 50 18.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 13, 1987, 4:09 p.m.
TRD-8710264

Monday, November 23, 1987, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9739—Proposed change in control of United Dental Care of Texas, Inc., Dallas, a health maintenance organization.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 12, 1987, 11:36 a.m.
TRD-8710151

Tuesday, November 24, 1987, 10 a.m. The Commissioner's Hearing Section will meet in Room 342 to consider Docket 9740—Acquisition of control of Hamilton Standard Life Insurance Company, San Antonio, by Robert Grantham, Jr., Houston, pursuant to the Texas Insurance Code. Article 21.49-1, §5.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6526.

Filed: November 13, 1987, 1:41 p.m.
TRD-8710245

Tuesday, November 24, 1987, 10 a.m. The State Board of Insurance will meet in Room 414 to consider proposed amendments to 28 TAC Chapter 27, Subchapter C; board orders on several different matters as itemiz-

ed on the complete agenda; fire marshal: personnel, litigation; statistical and rate development: personnel, discussion of development of reporting requirements provided for in Senate Bill 2, proposed letter to insurers regarding the Insurance Code, Articles 1.24A and 1.24B; research and information services: personnel; commissioner: personnel, litigation; plan of operation for the surplus lines stamping office; and amendment to personnel manual.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 16, 1987, 4:18 p.m.
TRD-8710327

Tuesday, November 24, 1987, 1:30 p.m. The Commissioner's Hearing Section will consider Docket 9732—Application for amendment to the articles of incorporation of United Mercantile Life Insurance Company, El Paso, increasing the authorized capital.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 13, 1987, 1:41 p.m.
TRD-8710244

Tuesday, December 15, 1987, 10 a.m. The board will meet in Room 414, to hold a prehearing conference for the annual title insurance hearing scheduled for December 17, 1987, at 9 a.m..

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 13, 1987, 4:09 p.m.
TRD-8710265

Thursday, December 17, 1987, 9 a.m. The board will meet in the Hearing Room, DeWitt Greer Building, 11th and Brazos Streets, Austin. According to the agenda summary, the board will consider adoption of premium rates for the writing of title insurance in the state of Texas and amendments to the basic manual of rules, rates and forms for the writing of title insurance in the state of Texas, 28 TAC §9.1.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 13, 1987, 4:10 p.m.
TRD-8710263



Texas Department of Labor and Standards

Friday, November 20, 1987, 1:30 p.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in emergency session in Room 105, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of

Mustang Chevrolet Corporation for alleged violation of the department's manufactured housing rules and regulations. The emergency status was necessary because hearing was scheduled at Mustang's request.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: November 13, 1987, 10:12 a.m.
TRD-8710201

Friday, November 20, 1987, 2:30 p.m. The Manufactured Housing Division will meet in emergency session in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Siesta Mobile Home Sales for alleged violation of the department's manufactured housing rules and regulations. The emergency status was necessary because hearing was scheduled at Siesta's request.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: November 13, 1987, 10:12 a.m.
TRD-8710200

Friday, December 4, 1987, 9 a.m. The Manufactured Housing Division will meet in Room 105, 920 Colorado Street, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Texas Lifestyle Manufactured Housing for alleged violation of the department's manufactured housing rules and regulations.

Contact: Jennifer J. Mellet, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: November 13, 1987, 10:12 a.m.
TRD-8710197



Board of Law Examiners

Sunday-Tuesday, November 22-24, 1987, 8:15 p.m. daily, except on Sunday November 22, 1987, 1 p.m. The Board of Law Examiners will meet in the Guest Quarters Suite Hotel, 303 West 15th Street, Austin on Sunday, and at the Texas Law Center, 1414 Colorado, Austin, on Monday and Tuesday. According to the agenda, the board will approve minutes of the July 1987 meeting; review budget for fiscal year 1988 and closeout fiscal year 1987; consider fiscal decisions on personnel pay, bank accounts, investment policy, travel reimbursements, and appropriate reserve fund level; discuss July 1987 and February 1988 bar exams; consider forms and policies regarding foreign legal consultants; review multistate bar exam; consider supplemental investigation policy and questions of eligibility and special requests; and hold hearings on moral character and fitness.

Contact: Wayne E. Denton, 510 South Congress Avenue, Suite 510, Austin, Texas 78704, (512) 463-1621.

Filed: November 13, 1987, 12:54 p.m.
TRD-8710243



Texas State Board of Medical Examiners

Monday, November 30, 1987

The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. times and agendas follow.

8 a.m. The Reciprocity Committee will consider licensure applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General 1974, H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: November 16, 1987, 1:32 p.m.
TRD-8710291

9:30 a.m. The Examination Committee will consider licensure applicants. The committee will also meet in executive session under authority of Texas Civil Statutes, Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Attorney General 1974, H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: November 16, 1987, 1:31 p.m.
TRD-8710292

Monday, November 30, 1987-December 3, 1987, 8 a.m. daily except Monday, November 30, 1987 at 11 a.m. The board will approve exams, medical schools, minutes, and financial reports; hear reports from committees, executive director, computer, probationers, administer exams, and hearings; consider license requests and cancellations, proposed rules, licensure-reinstatements, orders, duplicates, status changes, committees, ad-hoc-Senate Bill 1439, computer, district review, observe presentation by Guadalajara University; consider proposals for decisions, retirement rule, and registration time lapse. The board will also meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Attorney General 1974, H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: November 16, 1987, 1:32 p.m.
TRD-8710293



Monday, November 30, 1987, 11 a.m. The Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Austin. According to the agenda, the board will ap-

prove exams, medical schools, minutes, and the financial report, hear reports from committees, executive director, computer, and probationers, administer exams; conduct hearings for license requests and cancellations and proposed rules; consider licensure-reinstatements, orders, duplicates, and status changes; discuss committees-Ad Hoc, Senate Bill 1439, computer, and district review; hear presentation by Guadalajara University; proposals for decisions; and consider retirement rule and registration time lapse. The board also will meet in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 5.06(e)(1), and Attorney General Opinion H-484, 1974.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: November 16, 1987, 1:32 p.m.
TRD-8710293

Texas Department of Mental Health and Mental Retardation

Friday, November 13, 1987, 10 a.m. The Texas Board of Health of the Texas Department of Mental Health and Mental Retardation made an emergency agenda revision to a meeting held in the Auditorium, Central Office, 909 West 45th Street, Austin. According to the agenda summary, the board heard citizen's comments; approved minutes of the previous meeting of October 12, 1987; considered issues, emergency addition, and proposed construction of sports pavillion on campus of Rio Grande State Center. The emergency status was necessary due to potential loss of significant benefit to mentally retarded clients of Rio Grande State Center which was reasonably unforeseeable and required immediate board action.

Contact: Gary E. Miller, P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: November 12, 1987, 1:21 p.m.
TRD-8710152

North Texas State University/Texas College of Osteopathic Medicine

Thursday, November 19, 1987, 12 p.m. The Budget and Finance Committee, Board of Regents of the North Texas State University/Texas College of Osteopathic Medicine met at the Bent Tree Country Club, Dallas. According to the agenda, TCOM met to hear the gift report, reported on interest earnings, statement of Proposition 2 transactions, and computing center update. NTSU met to hear the gift report; discussed the agreement with the Boatman's National Bank of St. Louis, annual allocation of Proposition 2 funds, heard reports on interest earnings, statement of Proposition 2 transactions, and athletic report.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: November 13, 1987, 9:27 a.m.
TRD-8710203

Thursday, November 19, 1987, 1 p.m. The Advancement Committee, Board of Regents of the North Texas State University/Texas College of Osteopathic Medicine met in the Conference Room, Administration Building, North Texas State University, Denton. According to the agenda, TCOM met to hear the update on the fundraising activities. NTSU met to hear the update on the advancement activities for 1986-1987; considered the review of the educational foundation activities, discussed preliminary plans for the Fort Worth Gala, and heard briefing on NT trustees.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: November 13, 1987, 9:27 a.m.
TRD-8710204

Thursday, November 19, 1987, 2 p.m. The Facilities Committee, Board of Regents of the North Texas State University/Texas College of Osteopathic Medicine met in Room 201, Administration Building, North Texas State University, Denton. According to the agenda, TCOM met to discuss the architect selection for the long range space plan projects, Proposition 2 operating budget, and project status report. NTSU met to discuss the architect for repair and renovation projects, the architect for long term master plan, power plant upgrade/expansion, roof repairs-three buildings, remodeling of Kerr Hall Cafeteria-Phase I, replace parquet flooring in the union, fraternity and sorority housing, and heard project status report.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: November 13, 1987, 9:27 a.m.
TRD-8710205

Thursday, November 19, 1987, 2 p.m. The Role and Scope Committee, Board of Regents met in Room 201, Administration Building, North Texas State University, Denton. According to the agenda, TCOM met to discuss the drug abuse policy and the intellectual property policy. NTSU met to discuss the personnel, heard the small class report, enrollment report, discussed the emeritus recommendations, award honorary degrees, Merrill Ellis Intermedia Theater, heard regents' faculty lecturer, master of science, discussed hotel/restaurant management, master of science and doctor of philosophy in environmental sciences; NTSU foundation directors, union board of directors constitution, academic workload policy, evaluation of academic administrators, student code of conduct, athletic report, department of philosophy and religion, and update on searches.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: November 13, 1987, 9:28 a.m.
TRD-8710206

Friday, November 20, 1987, 8 a.m. The Board of Regents of the North Texas State University/Texas College of Osteopathic Medicine will meet in the Board Room, Administration Building, North Texas State University, Denton. TCOM will meet to approve minutes of the last meeting, discuss executive session (student issue, sale of alcohol, faculty member/student issue, Shermatex issue, Veda Sherman case, faculty tenure issue, coaches' contracts), hear gift report, discuss Proposition 2 budget, medical services research and development plan, discuss architect selection, long range plan, substance abuse policy. NTSU: discuss personnel, small classes, hear enrollment report, emeritus recommendations, discuss honorary degrees, Merrill Ellis Theater, regents' lecturer, MS, hotel/ restaurant management, MS and Ph.D, environmental science, union board of directors, academic workload policy, evaluation of academic administrators, academy of mathematics and science, admission standards, gift report, agreement, boatman's national bank, 1988 Proposition 2 funds, architect, repair and renovation projects, architect, long term master plan, power plant upgrade, roof repairs, remodeling of Kerr Hall, parquet flooring in the union, fraternity and sorority housing, new construction proposals, student code of conduct, NTSU/TCOM insurance program, approval of minutes, and NTSU foundation board of directors.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

Filed: November 13, 1987, 9:28 a.m.
TRD-8710207

Board of Nurse Examiners

Friday, December 4, 1987, 10 a.m. The Advisory Committee on Advanced Nurse Practitioners of the Board of Nurse Examiners will review current rules and regulations for advanced nurse practitioner status. The public is invited to attend this meeting as observers.

Contact: Aileen Kishi, 1300 East Anderson Lane, Suite C-225, Austin, Texas 78752, (512) 835-4880.

Filed: November 13, 1987, 9:26 a.m.
TRD-8710208

Board of Pardons and Paroles

Monday-Wednesday, November 23-25, 1987, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction

and initiate and carry through with appropriate action

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: November 12, 1987, 10:31 a.m.
TRD-8710140

Tuesday, November 24, 1987, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: November 12, 1987, 10:30 a.m.
TRD-8710139

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Texas State Board of Public Accountancy

Tuesday, November 17, 1987, 9 a.m. The Hearing Officer Hearings of the Texas State Board of Public Accountancy met in emergency session in Suite 340, 1033 La Posada, Austin. According to the agenda, the board heard Complaint Numbers 84-04-19L and 84-06-16L. The emergency status was necessary because it was the only time the hearing officer could meet.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 16, 1987, 3:56 p.m.
TRD-8710323

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Texas Public Finance Authority

Wednesday, December 2, 1987, 2 p.m. The Texas Public Finance Authority, will meet in Room 105, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the authority will adopt resolution authorizing Texas Public Finance Authority revenue bonds, series 1987; consider a memorandum of understanding with the State Purchasing and General Services Commission, a lease agreement with the State Purchasing and General Services Commission, a funds management agreement with the state treasurer, a trust indenture with MTrust Corporation, a bond purchase agreement with certain underwriters, an official statement, and other matters; adopt resolution concerning investment of bond proceeds; consider authorizing issuance, sale, and delivery of the authority's general obligation bonds, series 1987 and related matters; consider adoption of the seal, in-

terim professional contracts for G.O. bond issue; discuss request for proposals for professional contracts; hear reports by First Southwest Company on escrow restructuring and board approval of contingency plan and by First Southwest Company on arbitrage accounting and board action thereof.

Contact: Ann Moriarty, 201 East 14th Street, Austin, Texas 78701, (512) 463-3101.

Filed: November 13, 1987, 4:12 p.m.
TRD-8710266

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Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Monday, November 23, 1987, 8:30 a.m. The Extended Area Service (EAS) Advisory Committee will discuss EAS issues.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 12, 1987, 1:44 p.m.
TRD-8710154

Monday, November 23, 1987, 9 a.m. The Hearings Division will consider Dockets 7460, 7172, 7510, and 7127.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 13, 1987, 2:29 p.m.
TRD-8710249

Tuesday, November 24, 1987, 10 a.m. The Hearings Division will consider Substantive Rules in response to the requirements of Senate Bill 444 and House Bills 4 and 5 in the 1987 legislative session: §21.65, §21.86, §23.26, §23.27, §23.28, §23.31, and §23.32.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 16, 1987, 3:18 p.m.
TRD-8710326

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State Purchasing and General Services Commission

Tuesday, November 24, 1987, 9 a.m. The State Purchasing and General Services Commission will meet in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will consider final repeal of previously existing Rule 111.3 and final adoption of new Rule 111.3; final adoption of amendments to Rules 113.10, 113.2, 113.6, 113.72-113.74, 113.37, 113.5, 115.31-115.33, and 115.36; final adoption of new Rules 111.61-111.63; hear status report on protests to the State Telecommunications System request for proposal contract award; consider status of Texas Public Finance Authority

projects; transfer funds for emergency repair of exterior soffit, William B. Travis Building; hear monthly 3.09 report; consider request from Texas Parks and Wildlife Department for delegation of purchasing authority under Commission Rule 113.10(i); and set the time of the next commission meeting.

Contact: John R. Neel, Room 914, LBJ Building, 111 East Seventh Street, Austin, Texas 78701, (512) 463-3446.

Filed: November 13, 1987, 4:07 p.m.
TRD-8710269

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Railroad Commission of Texas

Monday, November 23, 1987, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The commission will consider and possibly elect chairman of Railroad Commission of Texas.

Contact: Walter E. Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: November 13, 1987, 10:49 a.m.
TRD-8710213

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters, including but not limited to discussion, consideration, and/or action on the management study, oil and gas general counsel, oil field investigator personnel and their operations, the creation and designation of an executive director with related positions and matters, and personnel matters relating to the office of general counsel and special counsel.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: November 13, 1987, 10:45 a.m.
TRD-8710214

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: November 13, 1987, 10:47 a.m.
TRD-8710215

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: November 13, 1987, 10:49 a.m.
TRD-8710216

Various matters falling within the Gas Utilities Division's regulatory jurisdiction. In

addition the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: November 13, 1987, 10:46 a.m.
TRD-8710217

The Gas Utilities Division made a revised agenda to consider Docket 87-06752-06778—Arkla, Inc. Statements of intent filed by Arkansas Louisiana Gas Company to increase residential and commercial rates in the environs of the cities of Atlanta, Avinger, Bloomburg, Daingerfield, Dekalb, Douglassville, Gilmer, Hooks, Hughes Springs, Jefferson, Leary, Linden, Lone Star, Maud, Miller's Cove, Mount Pleasant, Mount Vernon, Naples, New Boston, Omaha, Ore City, Pittsburg, Queen City, Talco, Uncertain, Winfield, and Winnsboro. (Filed by: Daniel R. Reener, P.O. Box 1148, Austin, Texas 78767, Date filed: 07-02-87.) consideration of statements of intent.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: November 13, 1987, 10:55 a.m.
TRD-8710218

The Gas Utilities Division will consider Docket 86-06302—Inquiry into the existing rates charged by Sesqui-Tex in the unincorporated areas of McCulloch County. (Filed by: commission's own motion, date filed: 7-25-86). consideration of inquiry. and Docket 86-06303—Inquiry into the City Gate rate charged by Sesqui-Tex Gas Corporation to the City of Brady. (Filed by: commission's own motion, date filed: 7-25-87). consideration of inquiry.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: November 13, 1987, 3:28 p.m.
TRD-8710252

Office of General Counsel will consider and act on the General Counsel's report on division administration, budget, procedures, and personnel matters; including but not limited to discussion and/or action on the following: Hufo Oils v. Railroad Commission C-5937 in the Supreme Court of Texas, Walker Operating, et al. v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al in relation to Oil and Gas Docket 10-87,017

Contact: Gail Watkins, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6921.

Filed: November 13, 1987, 10:45 a.m.
TRD-8710219

The Office of Information Services will consider and act on the Division Director's

report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: November 13, 1987, 10:48 a.m.
TRD-8710221

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: November 13, 1987, 10:48 a.m.
TRD-8710220

Various matters falling within the Oil and Gas Division's regulatory jurisdiction. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7325.

Filed: November 13, 1987, 10:47 a.m.
TRD-8710225

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: November 13, 1987, 10:47 a.m.
TRD-8710222

The Oil and Gas Division will investigate cementing practices of Western Company of North America.

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: November 13, 1987, 10:49 a.m.
TRD-8710226

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: November 13, 1987, 10:48 a.m.
TRD-8710227

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: November 13, 1987, 10:49 a.m.
TRD-8710228

The Office of the Special Counsel director's report relating to pending litigation, including but not limited to discussion and/or decision in Cause 417,521, Joe Broussard II and Ben C. Hebert v. Railroad Commission of Texas and Prudential Oil and Gas, Inc, 250th District Court, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: November 13, 1987, 10:48 a.m.
TRD-8710229

Consider various matters within the Surface Mining and Reclamation Division regulatory jurisdiction. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: November 13, 1987, 10:46 a.m.
TRD-8710230

Various matters falling within the Transportation Division's regulatory jurisdiction. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: C. Tom Clowe, Jr., P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: November 13, 1987, 10:55 a.m.
TRD-8710231



Texas Real Estate Commission

Monday, November 23, 1987, 9:30 a.m. The Texas Real Estate Commission will meet in the Conference Room, TREC Headquarters Office, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will approve minutes of the October 26, 1987, meeting; hear staff reports for month of September 1987; consider appointment of Real Estate Recovery Fund Investment Committee member, delegation to staff hearings officer duty of holding hearings relative to proprietary schools, complaint information concerning Dianna Lynn Kinsmar and Dempsie Henley, proposed new 22 TAC §535.162, concerning mandatory disclosure of agency by licensees, motions for rehearing and/or probation, and entry of orders in contested cases. The commission will also meet in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6252-17, §2(c).

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: November 13, 1987, 10:53 a.m.
TRD-8710211

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State Securities Board

Wednesday, December 2, 1987, 10 a.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda, the commissioner will determine whether an order should be entered revoking the registration of Denver Securities Corporation as a securities dealer in Texas.

Contact: Peggy Peters, 1800 San Jacinto Street, Austin, Texas 78705, (512) 474-2233.

Filed: November 13, 1987, 1:46 p.m.
TRD-8710246

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Select Committee on Tax Equity

Thursday-Friday, December 17-18, 1987, 9 a.m. The Select Committee on Tax Equity will meet in the Senate Chamber, State Capitol, Austin. According to the agenda, the committee will discuss specific spending issues (e.g., education demands, federal funding outlook, human service demands, potential budget reductions), state and local revenue needs, linking spending and income, and cash management issues.

Contact: Billy Hamilton, John H. Reagan Building, Room 304h-5, Austin, Texas 78711, (512) 463-1238.

Filed: November 16, 1987, 11:37 a.m.
TRD-8710289

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Texas A&M University System, Board of Regents

The Board of Regents of the Texas A&M University System met in the MSC Annex, Texas A&M University, College Station, unless otherwise noted. Dates, times, and agendas follow.

Sunday, November 15, 1987, 1 p.m. The Planning and Building Committee considered cancellation of unexpired balances of appropriations; heard reports of contract actions by the chancellor, construction project appropriations/authorizations by the chancellor, and contract actions by the president; considered initiation of major construction projects, action on bids, and appropriations for designs.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:53 a.m.
TRD-8710143

Sunday, November 15, 1987, 2 p.m. The Committee for Service Units considered

granting of emeritus title, increase in inspection fees, appointment to a nonelective position, and appointment to a policy board.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:53 a.m.
TRD-8710144

Sunday, November 15, 1987, 2:15 p.m. The Committee for Academic Campuses considered adoption of revised instructions for completing the faculty workload compliance reports, granting of titles of emeritus, renaming the hydrogen research center, and vending machine contracts.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:52 a.m.
TRD-8710145

Sunday, November 15, 1987, 2:40 p.m. The Executive Committee considered appointments and promotions, terminations, academic tenure, revision of faculty academic workload rule and regulations, participation in the Brazos County Research and Development Authority, revision of policy regarding initiation of minor construction projects, established and administered employees benefit plans, right-of-way easements, gifts, grants, loans and bequests, budget and fiscal transfers, appropriation from an unappropriated source, amendment of intellectual properties policies and procedures, personnel matters, naming of facilities, land and investment matters, litigation, and lease agreements.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:52 a.m.
TRD-8710146

Monday, November 16, 1987, 11 a.m. The Board of Regents considered construction matters for the Texas A&M University System, emeritus titles, appointments and promotions, terminations, academic tenure, gifts, grants, loans and bequests, budget and fiscal changes, personnel matters, naming of facilities, land and investment matters, litigation, lease agreements revision of faculty academic workload rules and regulations, participation in Brazos County Research and Development Authority, revision of policy regarding initiation of minor construction projects, established and administered employees benefit plans, right-of-way easements, appropriation from an unappropriated source, amendment of intellectual propoerties policies and procedures, revision of instructions for completing the faculty workload compliance reports, renaming of the hydrogen research center, vending machine contracts, increased inspection fees, appointment to a nonelective position, and appointment to a policy board.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:51 a.m.
TRD-8710147

Monday, November 16, 1987, 2 p.m. The Committee for Academic Campuses rescheduled a meeting originally scheduled for November 11, 1987, held in the President's Conference Room, Second Floor, Administration Building, Prairie View A&M University, Prairie View. According to the agenda, the committee reviewed the academic programs and plans of Prairie View A&M University.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 12, 1987, 10:51 a.m.
TRD-8710148

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Texas State Technical Institute

Sunday-Monday, November 15-16, 1987, 4 p.m. and 9 a.m., respectively. The Board of Regents of Texas State Technical Institute made a revised agenda to a meeting held in the Conference Room, Central Administration Building, Waco. According to the agenda summary, the board met in executive session to review matters of litigation, organization, and personnel in accordance with Texas Civil Statutes, Article 6252-17, §2J and §2G. The emergency status was necessary because matters need immediate legal review and disposition.

Contact: Theodore A. Talbot, Texas State Technical Institue, Waco, Texas 76705, (817) 799-3611, ext. 3910.

Filed: November 13, 1987, 3:21 p.m.
TRD-8710251

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Board of Vocational Nurse Examiners

Monday-Wednesday, November 16-18, 1987, 8 a.m. The Board of Vocational Nurse Examiners made an emergency agenda revision to a meeting held in the Howard Johnson Plaza Hotel North, 7800 North IH-35, Austin. According to the agenda summary, the board considered revision of Rule 235.2. The emergency status was necessary because to be in compliance with House Bill 5, the board had to adopt a rule relating to the agency's minimum, maximum, and median times for processing a permit prior to January 1, 1988.

Contact: Joyce A. Hammer, 1300 East Anderson Lane, Suite 285, Austin, Texas 78752, (512) 835-2071.

Filed: November 12, 1987, 10:47 a.m.
TRD-8710153

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Tuesday, November 23, 1987, 10 a.m. The commission will meet in Room 118 to consider water district bond amendment, release from escrow, use of surplus funds, water rate matters, proposed water quality permits, amendments and renewals, water right applications, amendments to certificates of adjudication, and adoption of new rules and amendments to existing rules.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 13, 1987, 11:25 a.m.
TRD-8710236

Monday, November 23, 1987, 2 p.m. The commission will meet in Room 123, to consider executive director's report on agency administration, policy, budget, procedures, and personnel matters.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 13, 1987, 11:24 a.m.
TRD-8710235

Tuesday, November 24, 1987, 2 p.m. The commission will meet in Room 118, to consider complaint against Vic Tinsley and the Millsap Water Company, Inc., the owner and operator of the Millsap Water Company Dam in Parker County; and appeal by out-of-district ratepayers of retail water rates established by the Lakeway Municipal Utility District (Dockets 7065-M and 7075-M).

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 13, 1987, 11:24 a.m.
TRD-8710234

Wednesday, November 25, 1987, 10 a.m. The commission will meet in Room 118, to consider application of City of Lancaster for amendment to increase the area of CCN 10098, Dallas County; order assessing administrative penalties and requiring certain actions of City of Bells (Permit 10126-01); Gulf Chemical and Metallurgical Corporation (Permit 01861) and consideration of petitions for rulemaking from local governments pursuant to the Solid Waste Disposal Act and Texas Administrative Code.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 13, 1987, 11:24 a.m.
TRD-8710233

Wednesday, November 25, 1987, 2 p.m. The commission will meet in Room 118, to consider application by City of Cleveland for an amendment to Permit 10766-02 to authorize an increase in the discharge of treated domestic wastewater effluent from 0.5 million gallons per day to 1.2 MGD, Liberty County.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: November 13, 1987, 11:25 a.m.
TRD-8710232

Monday, December 7, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 1-100, to consider Docket 7221—Application for a certificate of convenience and necessity filed by Cimarron Park Water Company, Inc.

Contact: Marcella Sellers, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 16, 1987, 4:00 p.m.
TRD-8710324

Friday, December 11, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7368-R—Application for a rate increase filed by Tawakoni Water Utility Corporation.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 13, 1987, 3:57 p.m.
TRD-8710267

Regional Agencies

Meetings Filed November 12

The Austin-Travis Mental Health and Mental Retardation Center, Finance and Control Committee and Board of Trustees, met in Room 107, 611 South Congress Avenue, Austin, on November 16, 1987, at 7:30 a.m. and noon, respectively. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Austin, Texas 78704, (512) 447-4141.

The Bastrop County Appraisal District, Board of Directors, met in the Bastrop County Appraisal District office, 1200 Cedar Street, Bastrop, on October 15, 1987, at 7:30 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Central Plains Mental Health and Mental Retardation Center, Board of Trustees, met at 706 Canyon, Plainview, on November 19, 1987, at 7 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79702, (806) 293-2636.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on November 16, 1987, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Harris County Appraisal District, Board of Directors, met on the Eighth Floor, 2800 North Loop, Houston, on November 18, 1987, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291.

The Heart of Texas Council of Governments, Executive Committee, met at 320 Franklin Avenue, Waco, on November 19, 1987, at 10 a.m. Information may be obtained from Mary McDow, 320 Franklin Avenue, Waco, Texas 76701-2297, (817) 756-6631.

The Hunt County Tax Appraisal District, Board of Directors, met in the Boardroom, Hunt County Tax Appraisal District Office, 4801 King Street, Greenville, on November 19, 1987, at 7 p.m. Information may be obtained from Joe Pat Davis or Jeanette Jordan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lamar County Appraisal District, Board of Directors, met in the Lamar County Appraisal District Office, 1523 Lamar Avenue, Paris, on November 16, 1987, at 5 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.
TRD-8710142

Meetings Filed November 13

The Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson Avenue, Jourdanton, on November 19, 1987, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson Avenue, Jourdanton, Texas 78026, (512) 769-2730.

The Barton Springs-Edwards Aquifer Conservation District, met at 909 North Loop 4, Buda, on November 16, 1987, at 6 p.m. Information may be obtained from Larry G. Hada, 98 San Jacinto Boulevard, Suite 1800, Austin, Texas 78701, (512) 472-8021.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on November 20, 1987, at 4 p.m. Information may be obtained from Walter Sanetieu, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Brown County Appraisal District, Board of Directors, met at 403 Fisk Avenue, Brownwood, on November 16, 1987, at 7 p.m. Information may be obtained from Linda Meeks, 403 Fisk, Brownwood, Texas 76801, (915) 643-5676.

The Burnet County Appraisal District, Appraisal Review Board and Board of Directors, met at 215 South Pierce Street, Burnet, on November 17, 1987, at 9 a.m. and 5 p.m., respectively. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Capital Area Rural Transportation System (CARTS), Board of Directors, met in the Conference Room, 5021 East First Street, Austin, on November 19, 1987, at 10 a.m. Information may be obtained from Ed-

na Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Dallas Area Rapid Transit Authority, Mobility Impaired Committee and Budget and Finance Committee, met at 601 Pacific Avenue, Dallas, on November 17, 1987, at 2 p.m. and 5 p.m., respectively. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Appraisal Review Board, will meet in Suite 500, 1420 West Mockingbird Lane, Dallas, on November 20, 1987, at 2 p.m. Information may be obtained from Rick Kuehler, 1420 West Mockingbird Lane, Dallas, Texas 75247, (214) 631-0520.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on November 16, 1987, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Hays County Appraisal District, Board of Directors, met at 632 A East Hopkins-Municipal Building, San Marcos, on November 18 and 19, 1987, at 5 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Jack County Appraisal District, Board of Directors, met at the Los Creek Office Building, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Lower Colorado River Authority, Natural Resources Committee, Energy Operations Committee, Audit and Budget Committee, Finance and Administration Committee, and Planning and Public Policy Committee met at 3700 Lake Austin Boulevard, Austin, on November 18, 1987, at 9 a.m. The Board of Directors met on November 19, 1987, at 9 a.m. Information may be obtained from John E. Bagalay, Jr., 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3200.

The Panhandle Ground Water Conservation District #3, Board of Directors, will meet in the Water District Office, 300 South Omohundro, White Deer, on November 30, 1987, at 7 p.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The Red River Authority of Texas, Board of Directors, met in Room 214, Wichita Falls Activity Center, 1001 Indiana, Wichita Falls,

on November 19, 1987, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The Wood County Appraisal District, Board of Directors, met in the Conference Room, 217 North Main, Quitman, on November 19, 1987, at 1:30 p.m. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783, (214) 763-4946. TRD-8710195



Meetings Filed November 16

The Ark-Tex Council of Governments, Executive Committee, met in the Holiday Hotel, Mount Pleasant, on November 19, 1987, at 5:30 p.m. Information may be obtained from D. Buckworth, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Coryell County Appraisal District, Board of Directors, met at 113 North Seventh, Gatesville, on November 19, 1987, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, will meet in the Jasper County Mental Health and Mental Retardation Center, Highway 63 West, Jasper, on November 24, 1987, at noon and 5:30 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

The East Texas Council of Governments, Private Industry Council, met at Kilgore, on November 19, 1987, at 9:30 a.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, on December 1, 1987, at noon. Information may be obtained from R. P. Campbell, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311, ext. 102.

The Kendall County Appraisal District, Appraisal Review Board, will meet at 207 East San Antonio Street, Boerne, on November 20, 1987, at 8:30 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Lamb County Appraisal District, Appraisal Review Board, met in the board meeting room, 330 Phelps Avenue, Littlefield, on November 19, 1987, at 7 p.m. Information may be obtained from Murlene J. Bilbrey, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Lower Neches Valley Authority, Board of Directors, will meet at 7850 Eastex Freeway, Beaumont, on November 24, 1987, at 10:30 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The San Jacinto River Authority, Board of Directors, will meet in the Lake Conroe Office Building, Highway 1054 West, Conroe, on November 24, 1987, at 1 p.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111.

The Tarrant Appraisal District, Board of Directors, met in Suite 505, 1701 River Run, Fort Worth, on November 19, 1987, at 10 a.m. Information may be obtained from Olive Miller, 1701 River Run, Suite 200, Fort Worth, Texas 76107, (817) 332-3151.

The Wood County Appraisal District, Appraisal Review Board, will meet in the Conference Room of the Wood, 217 North Main, Quitman, on November 20, 1987, at 9 a.m. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783, (214) 763-4891. TRD-8710286



Meetings Filed November 17

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, will meet at 3801 Avenue J, Lubbock, on November 23, 1987, at 11:30 a.m. Information may be obtained from Gene Menefee, 1201 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The Texas Regional Planning Commission's Employee Benefit Board of Trustees, will meet at the Radisson Plaza Hotel, Austin, on December 3, 1987, at 10 a.m. Information may be obtained from Gloria C. Arriaga, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Trinity River Authority of Texas, Utility Services Committee and the Legal Committee, will meet at 5300 South Collins, Arlington, on November 23, 1987, at 10 a.m. and 2 p.m., respectively. Information may be obtained from Jack C. Worsham, 5300 South Collins, P.O. Box 60, Arlington, Texas 76101, (817) 467-4343. TRD-8710329



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 Agriculture Amendment to Request for Proposals

The Texas Department of Agriculture is extending the final date for submission of requests for proposals for projects using integrated pest management. The request for proposals was published in the October 27, 1987, issue of the *Texas Register* (12 TexReg 3971). The date for submission of requests has been extended to November 30, 1987. Proposals must be submitted no later than 5 p.m. on that date. All other terms of the request for proposals remain the same.

Issued in Austin, Texas, on November 13, 1987

TRD-8710254 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: November 13, 1987
For further information, please call (512) 463-7583



Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of October 26-November 6, 1987.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Benham and Company, Inc., Mineola; flexographic printing facility; Mineola, Wood County; 18405; new

Amoco Production, Sundown; amine unit replacement; Sundown, Hockley County; 18406; new

Kirby Forest Industries, Bon Weir; kraft pulp mill; Bon Weir, Newton County; 18410; new

Kirby Forest Industries, Bon Weir; coal/wood-fired boilers/coal preparation; Bon Weir, Newton County; 18411; new

United States Department of Energy, Panhandle; pantax packaged steam boilers; Panhandle, Carson County; 18379; new

Sun Exploration and Production Company, San Isidro; natural gasoline separation facility; San Isidro, Starr County; 18417; new

Olan Mills Incorporated of Texas, Waco; photo finishing facility; Waco, McLennan County; 17419; new

Mobil Oil Corporation, Beaumont; wastewater treatment facility; Beaumont, Jefferson County; 18422; new

Cain Chemical Inc., Liverpool; wastewater treatment facility; Liverpool, Brazoria County; 18423; new

Mobile Oil Corporation, Beaumont; DEA system improvements; Beaumont, Jefferson County; 18424; new

Mobil Oil Corporation, Beaumont; north flare gas recovery unit; Beaumont, Jefferson County; 18425; new

Issued in Austin, Texas, on November 10, 1987

TRD-8710159 Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: November 12, 1987
For further information, please call (512) 451-5711, ext 354



Revised Notice of Contested Case Hearing Number 219, In the Matter of Permian Chemical Company, Inc.

Pursuant to the authority provided in the Texas Clean Air Act (the Act), Texas Civil Statutes, Article 4477-5, §§3.15, 3.7, 3.20, and 3.27(g); and the procedural rules of the Texas Air Control Board (TACB), §§103.11, 103.31, and 103.41 an examiner for the TACB will conduct a hearing to examine the compliance status of Permian Chemical Company, Incorporated's (the company) hydrochloric acid manufacturing plant on Pronto Road, Odessa, Ector County. A prior revised notice of contested case hearing in this matter was issued on August 29, 1986, to examine the compliance status of this facility. An order was entered on December 12, 1986, staying the proceedings, and on September 29, 1987, the staff of the TACB requested the issuance of this notice.

Said company is directed to appear at the time and place set out in this notice and respond to allegations that the operations of the company's facility have not been in compliance with the Act, the rules and regulations of the TACB

and Permit C-5717A. Specifically, it is alleged that emissions from the plant stack may have exceeded the levels allowed under Permit C-5717A, that emissions from the plant may have caused or contributed to a condition of air pollution in violation of the Act, §4.01(a) and (b), 31 TAC §101.4, and that the company's operations have violated the requirements of the Act §3.27(a), and of TACB §§101.6, 101.7, 111.1, 111.21, 111.23, 116.1, 116.4 and 116.5.

The record of this hearing will be used by the TACB to determine whether or not violations of Permit C-5717A, the Act or the cited rules and regulations of the TACB have occurred. If the TACB determines that such violations have occurred, this record will be used to determine what, if any, orders are appropriate, including whether or not Permit C-5717A should be revoked.

Information regarding the possible violations and copies of the rules and regulations of the TACB are available for public inspection at the central office of this agency located at 6330 Highway 290 East, Austin, Texas 78723, the TACB Odessa regional office, 1901 East 37th Street, Suite 101, Odessa, Texas 79762, and the office of the Odessa City Secretary, 411 West 8th Street, Odessa, Texas 79760.

The examiner has set the hearing to begin at 10 a.m. on January 12, 1988, at the central office of the TACB, Room 332, 6330 Highway 290 East, Austin, Texas 78723. Parties to the hearing at the time of issuance of this revised notice shall remain parties under this revised notice. In addition, any other persons desiring to be made a party must specifically apply in writing for party status to Examiner Bill Ehret, 6330 Highway 290 East, Austin, Texas 78723. No other persons will be admitted as parties unless the request is actually received at the previously mentioned address by 5 p.m., December 1, 1987. Previous correspondence with the TACB is not effective for this purpose. At the hearing on the merits, only those persons admitted as parties will be permitted to present evidence and argument and to cross-examine witnesses. Any person who desires to give testimony at the hearing but who does not desire to be a party, may call the Legal Division of the TACB at (512) 451-5711, Extension 350, to determine the names and addresses of all admitted parties. The parties may then be contacted about the possibility of presenting testimony.

Pursuant to the procedural rules of the TACB, §103.46, the examiner has scheduled a prehearing conference on December 15, 1987, at 2 p.m. at the central office of this agency located at 6330 Highway 290 East, Room 209, Austin, Texas 78723. All persons wishing to be admitted as parties must attend the conference. Proposed written disputed issues for consideration at the hearing on the merits and written requests for official notice should be made at the prehearing conference. Motions for continuance will only be granted upon proof of good cause. At this conference a specific date prior to the hearing on the merits may be established for the exchange of written direct testimony and copies of written and documentary evidence pursuant to board §103.46(2). Prehearing orders setting out discovery periods and other prehearing requirements may also be issued following this prehearing conference.

Members of the general public who plan to attend the hearing are encouraged to telephone the central office of the TACB in Austin at (512) 451-5711, Extension 350, a day or two prior to the hearing date in order to confirm the setting since continuances are granted from time to time.

Issued in Austin, Texas, on November 10, 1987

TRD-8710158

Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: November 12, 1987

For further information, please call (512) 451-5711, ext 354



Banking Department of Texas Application to Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On October 14, 1987, the banking commissioner received an application to acquire control of the First State Bank, Temple (Chilton), by Frank P. Finch of Troy.

On November 12, 1987, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on November 12, 1987

TRD-8710210

William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: November 13, 1987

For further information, please call (512) 479-1200



Texas Department of Commerce Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period November 2, 1987-November 6, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of November 6, 1987: \$779,925.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from November 2, 1987, through November 6, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from November 2, 1987-November 6, 1987, in order of issuer, user, description, and amount: North Texas Higher Education Authority, Inc., eligible borrowers, qualified student loans, \$98,000,000.

Issued in Austin, Texas, on November 9, 1987.

TRD-8710272 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: November 16, 1987
For further information, please call (512) 472-5059.

**Office of Consumer Credit
Commissioner**

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 11/16/87-11/22/87	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 11/01/87-11/30/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 10/01/87-12/31/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 10/01/87-12/31/87	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2) ⁽²⁾ 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 10/01/87-12/31/87	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/87-12/31/87	18.00%	N/A

Judgment Rate—Article
1.05, \$2
11/01/87-11/30/87 10.00% 10.00%

- (1) For variable rate commercial transactions only
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on November 9, 1987.

TRD-8710155 Al Endsley
Consumer Credit
Commissioner

Filed: November 12, 1987
For further information, please call (512) 479-1280.

**Texas Education Agency
Request for Applications**

This request for applications is filed in accordance with Texas Civil Statutes, Article 6252-11c.

Description. The Texas Education Agency requests applications for the third year development of staff development modules for improving the utilization of varying strategies to enhance the teaching of mathematics for Grades 3-12 teachers pursuant to the provisions of the Education for Economic Security Act (EESA), Title II. The focus of the modules will be on using innovative concrete materials and problem solving strategies to provide opportunities for students to learn the essential elements of the state mathematics curriculum. Contracts will be awarded for the development of four modules: 9-12 Geometry, 6-8 Geometry, 6-8 Numeration, and 3-6 Measurement.

The development of the modules will be contracted to one or more entities. Each contractor may apply to develop one or more modules. Eligible applicants include any school district, education service center, college or university, private company, nonprofit organization, or individual.

Dates of Project. The project starting date will be April 1, 1988. The project ending date will be June 30, 1989.

Project Amount. The maximum funding for this project is \$161,210.

Further Information. A copy of the complete request for applications may be obtained by calling or writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304.

For clarifying information about this request, contact Dr. Cathy Seeley Peavler, director of mathematics, or Donna Chicoine, mathematics staff development project director, Division of General Education, Texas Education Agency, (512) 463-9585.

Deadline for Receipt of Applications. The deadline for submitting an application is 5 p.m., January 20, 1988.

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

TRD-8710285 W. N. Kirby
Commissioner of Education
Texas Education Agency

Filed: November 16, 1987
For further information, please call (512) 463-9212.

Texas State Library and Archives Commission

Consultant Contract Reports

Senate Bill 737, 65th Legislature, Texas Civil Statutes, Article 6252-11c, requires state agencies and regional councils of governments to file with the Office of Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency is required to file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, the Act directs the contracting agencies to file copies of the resulting reports with the Texas State Library. The library is required to compile a list of the reports received and submit the list quarterly for publication in the *Texas Register*.

Following is a list of reports received for the 3rd quarter of 1987. The reports may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin.

Agency: Coordinating Board, Texas College and University System

Consultant: Coopers and Lybrand Company

Title:

- (1) Review of Governance and Management Practices in Texas Public Higher Education: Executive Summary.
- (2) Review of Governance and Management Practices in Texas Public Higher Education: Technical Report.
- (3) Review of Governance and Management Practices in Texas Public Higher Education: Appendices.

Agency: Economic Development Commission

Consultant: Luis A. Morales

Title: Comercio Texas/Mexico Trade.

Agency: Texas Employment Commission

Consultant: Technology Transfer Associates

Title:

- (1) Comprehensive Language Services Program, Phase One: Public Hearings and TEC Input.
- (2) Comprehensive Language Services Program, Phase Two: Operating Plan. (Final Report)
- (3) Comprehensive Language Services Program, Phase Three: Pilot Program. (Final Report)

Agency: Texas Education Agency

Consultant: Gallaudet University

Title: Survey of Hearing Impaired Children and Youth, Final Report 1986-87.

Agency: Department of Mental Health and Mental Retardation

Consultant: Touche Ross and Company

Title: Phase I Report: Review of Revenue Recovery Opportunities for State Facilities and Community Centers.

Agency: Board of Pardons and Paroles

Consultant: Lynn M. Moak

Title:

- (1) Automated Information System for the Board of Pardons and Paroles.
- (2) Summary Information to Support the Request of the Texas Board of Pardons and Paroles for Automation System Funding in 1985.

Issued in Austin, Texas, on November 10, 1987.

TRD-8710209

William D. Gooch
Director and Librarian
Texas State Library and Archives
Commission

Filed: November 13, 1987

For further information, please call (512) 463-5460.



Texas Department of Mental Health and Mental Retardation Public Hearings

At the request of the Texas Council of Community Mental Health and Mental Retardation Centers, Inc., the Texas Department of Mental Health and Mental Retardation will convene public hearings on December 4, 1987, at 2 p.m., in the auditorium of its central office at 909 West 45th Street, Austin. The purpose of the hearings is to receive public comments relative to the proposal of rules governing certification of community residential programs for persons with mental retardation (TAC 25, Part II, Chapter 40I, Subchapter I) and rules governing the licensure of crisis stabilization units (TAC 25, Part II, Chapter 40I, Subchapter K), both of which were proposed for public comment in the August 21, 1987, issue of the *Texas Register*. Comments on the rules governing certification of community residential programs will be accepted from 2 p.m.-3:30 p.m. Comments on the rules governing licensure crisis stabilization units will be accepted from 3:30 p.m.-5 p.m.

The hearings are held pursuant to the rulemaking provisions of the Administrative Procedures and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Presentations may be time-limited at the discretion of the department.

Inquiries regarding the hearing should be directed to Sue Dillard, Director, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, (512) 465-4650.

Issued in Austin, Texas, on November 13, 1987

TRD-8710196

Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: November 13, 1987

For further information, please call (512) 465-4650.



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 November 2-6, 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.

Period of November 2-6, 1987

City of Post; wastewater treatment facilities; approximately one mile south-southeast of the City of Post in Garza County; 13048-01; renewal

United States Department of the Navy, Naval Weapons Industrial Reserve Plant, McGregor; plant which manufactures solid rocket motor repellant; southwest of the City of McGregor, just west of State Highway 317, bounded on the south by FM Road 2671 and on the north by the St. Louis Southwestern Railway, Coryell and McLennan Counties; 02335; amendment

City of San Perlita; treatment facility; west of the intersection of First Avenue and Seminole Avenue and

3,000 feet west-southwest of the intersection of FM Roads 2209 and 3142, adjacent to the City of San Perlita, Willacy County; 12391-01; renewal

Maxim Production Company, Inc., Boling; poultry facilities; three miles west of Boling on Highway 442 on the north side of the highway in Wharton County; 02781; amendment

T. J. Blackburn Syrup Works, Inc., Jefferson; lagoon treatment system; on the north side of State Highway 49 in the western portion of the City of Jefferson in Marion County; 01428; amendment

Nazareth Water Supply and Sewer and Service Corporation, Nazareth; treatment facility; on the northwest corner of FM 168 and State Highway 86, west of the City of Nazareth in Castro County; 10979-01; amendment

American Fructose-Dimmitt, Inc., Dimmitt; treatment facility; at 700 East Jones Street in the City of Dimmitt, Castro County; 01410; amendment

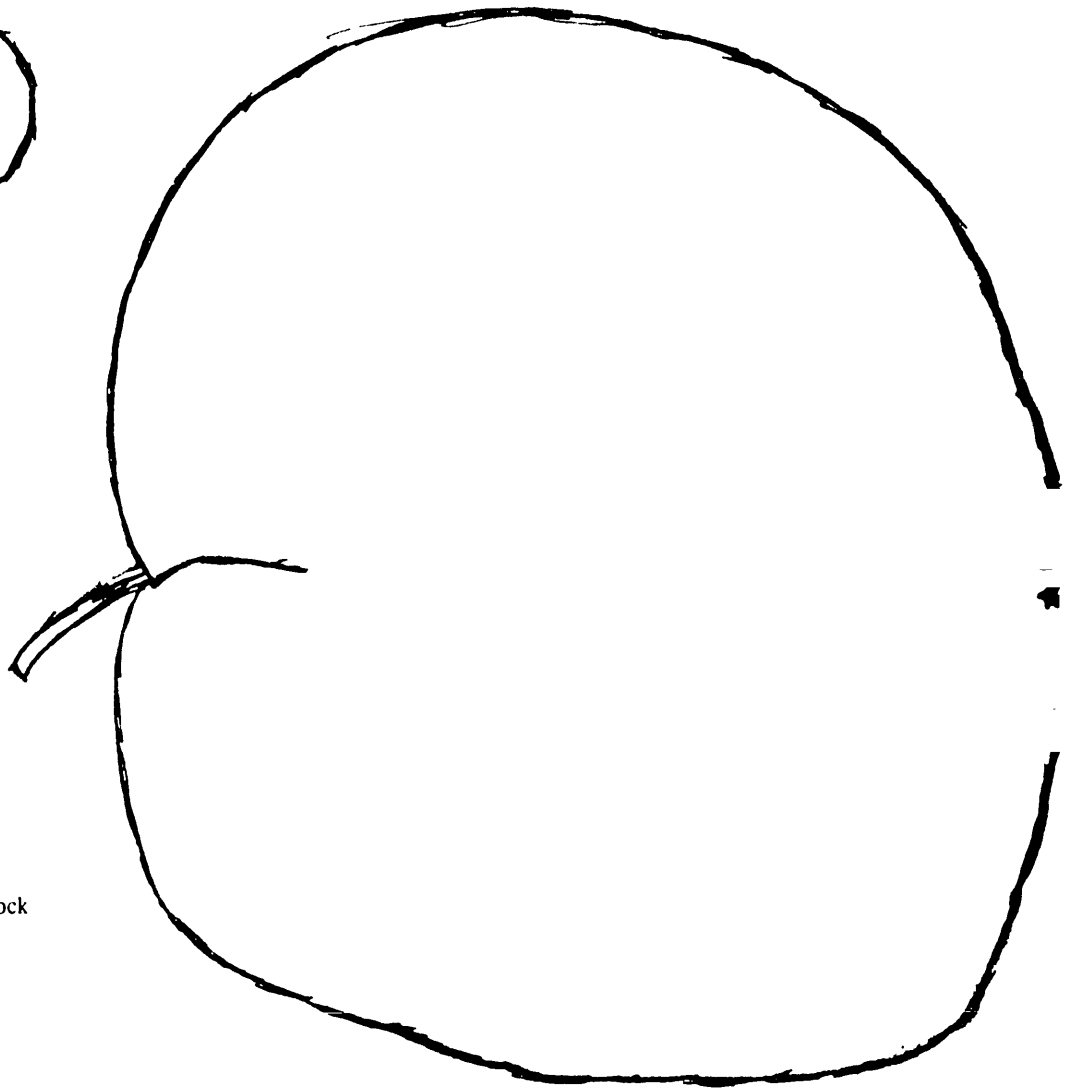
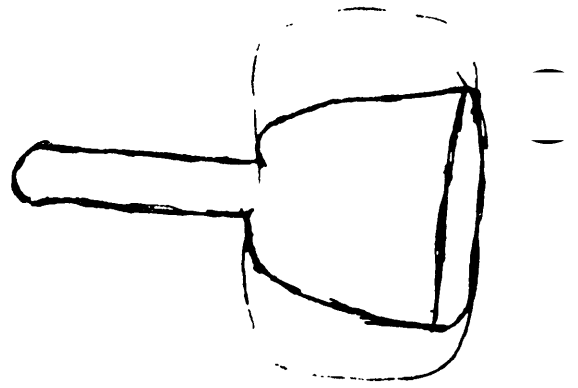
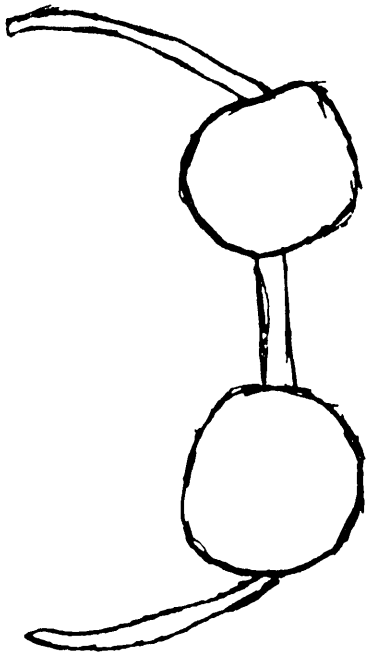
Issued in Austin, Texas, on November 6, 1987.

TRD-8710131 Karen A. Phillips
 Chief Clerk
 Texas Water Commission

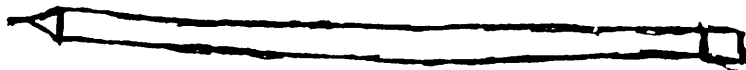
Filed: November 10, 1987

For further information, please call (512) 463-7898





Name: Erica
Grade: 3
School: Maedgen Elementary, Lubbock



Name: Aaron B.
Grade: 3
School: Maedgen Elementary, Lubbock



	5 weeks	6 weeks	6 weeks
Spelling	100	100	100
Math	91	99	80
Reading	89	100	100
Science	80	90	99
Music	S	S	S
Art	S	S	S
Handwriting	S	S	S

Name: Angela Shelton
Grade: 3
School: Maedgen Elementary, Lubbock

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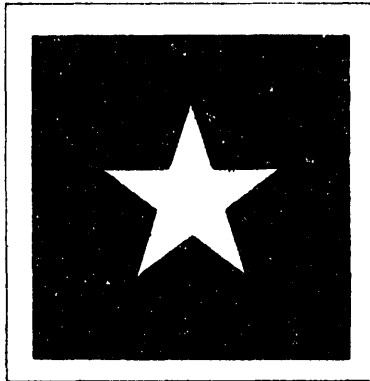
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