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TEXAS DOCUMENTS

TEXAS REGISTER

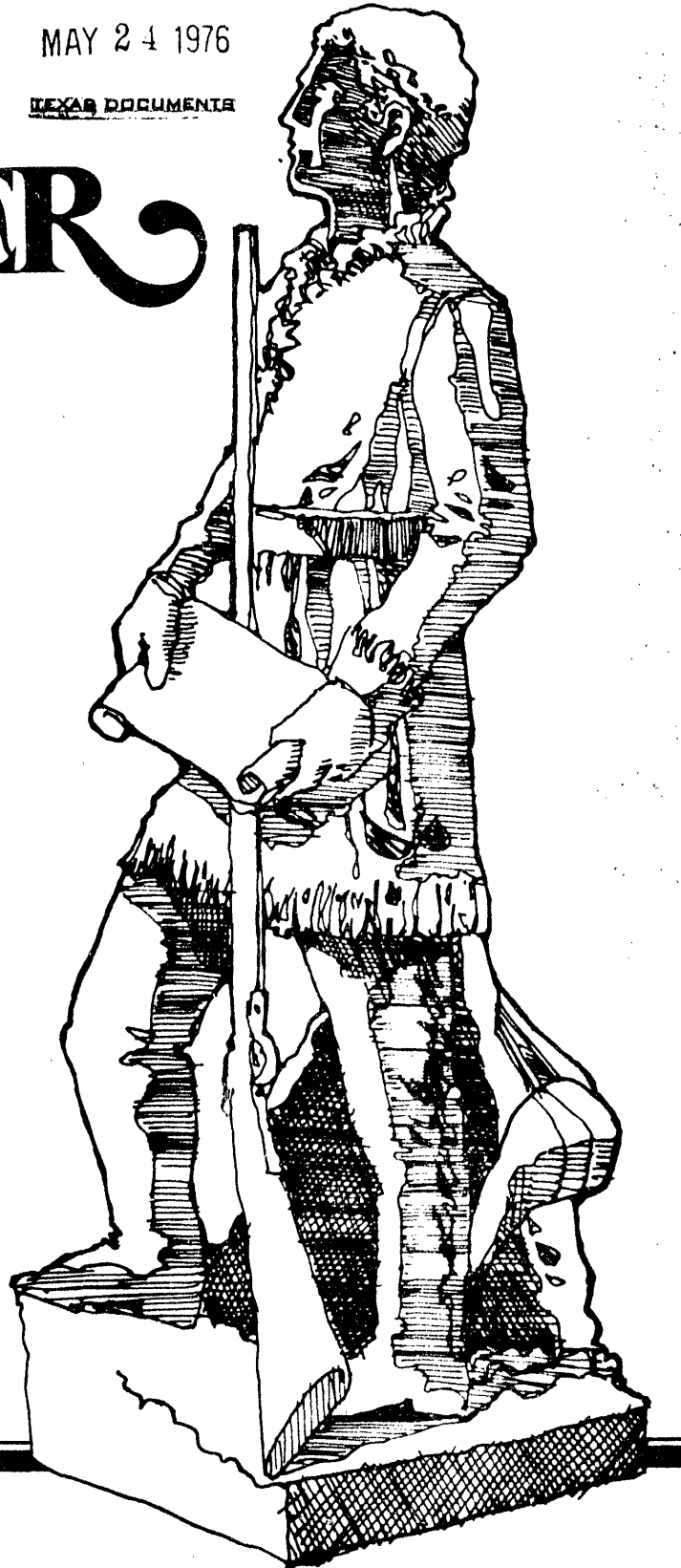
In This Issue...

Accident prevention rules proposed by the Office of the Attorney General

Health systems agency rules proposed by the Texas Health Facilities Commission

Public school finance rules adopted by the Texas Education Agency

Texas Judicial Council report on capital punishment



Office of the Secretary of State

The Texas Education Agency has adopted amendments to rules designating special educational programs for talented and gifted students, and has adopted a rule creating the State Advisory Council for gifted and talented students. Other rules adopted by TEA relate to school accreditation; pupil attendance and personnel accounting for public school finance; teacher certification; and amendments to rules relating to appointment of official advisory groups.

A series of rules has been proposed by the Texas Health Facilities Commission aimed at creating standard criteria and procedures for application for and awarding of certificates of need by health systems agencies. The rules appear in the Proposed Rules section.

The Texas Judicial Council in the In Addition section reports the results of a study by the council on capital murder cases in Texas courts.

Attorney General John Hill has found in Opinion H-822 that the entire amount of an appropriations item for an agency probably would be allowed by the courts if the governor has submitted formal written advice to the comptroller that a specified fact exists relating to the appropriations item.

Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.

Artwork: Gary Thornton

TEXAS REGISTER

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The *Register* contains executive orders of the Governor; summaries of Attorney General's opinions and summaries of requests for opinions; emergency rules, proposed rules, and adopted rules of state agencies; notices of open meetings; and miscellaneous notices of general interest to the public of Texas.

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The Attorney General

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Opinions

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Requests for Opinions

Summary of Request for Opinion RQ-1389

Request for opinion sent to the Attorney General's Opinion Committee by Bob Armstrong, Commissioner, General Land Office, Austin.

Summary of Request: Should the proceeds of the sale of second-hand drilling equipment recovered in the Duval County Ranch case, reported at 281 SW2d 83 and 504 SW2d 923, be credited to the Permanent School Fund or to the funds appropriated to the General Land Office?

Filed: May 14, 1976, 9:50 a.m.
Doc. No. 762626

Summary of Request for Opinion RQ-1390

Request for opinion sent to the Attorney General's Opinion Committee by Tom Hanna, Criminal District Attorney, Beaumont.

Summary of Request: What is the fee for citation to be charged in a small claims court?

Filed: May 14, 1976, 9:50 a.m.
Doc. No. 762627

Summary of Request for Opinion RQ-1391

Request for opinion sent to the Attorney General's Opinion Committee by Tom Hanna, Criminal District Attorney, Beaumont.

Summary of Request: Must a petition be filed with the county clerk before an order of protective custody of an alcoholic is issued under Section 9, Article 5561c, Vernon's Texas Civil Statutes?

Issued in Austin, Texas, on May 12, 1976.

Doc. No. 762628 C. Robert Heath
Opinion Committee Chairman
Attorney General's Office

Filed: May 14, 1976, 9:50 a.m.

For further information, please call (512) 475-5445.

Opinions

Summary of Opinion H-821

Request from E. L. Short, Chairman, Committee on Intergovernmental Affairs, House of Representatives, Austin, concerning location of offices of justices of the peace.

Summary of of Opinion: When a justice precinct in which the county courthouse is located contains more than 75,000 inhabitants, the commissioners court is required to provide the justice of the peace with a suitable place to hold court in the courthouse.

Filed: May 14, 1976, 9:50 a.m.
Doc. No. 762624

Summary of Opinion H-822

Request from Lane Denton, Chairman, Committee on Social Services, House of Representatives, Austin, concerning the effect of governor's determination that Texas Youth Council appropriation contingency has been partially met or substantially met.

Summary of Opinion: Where an appropriation item for the Texas Youth Council has been made contingent upon a determination by the governor that a single, specified fact exists, the governor's formal written advice to the comptroller that the specified fact has been sufficiently met so as to authorize the agency to utilize a part of the appropriated funds probably would be construed by the courts as a certificate that the condition has been satisfied so as to make available to the agency the entire amount appropriated.

Issued in Austin, Texas, on May 12, 1976.

Doc. No. 762625 C. Robert Heath
Opinion Committee Chairman
Attorney General's Office

Filed: May 14, 1976, 9:50 a.m.

For further information, please call (512) 475-5445.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

Numbering System-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

Symbology-- Changes to existing material are indicated in *bold italics*. [Brackets] indicate deletion of existing material.

Office of the Attorney General

Rules of State Employees-Workers Compensation Division

Accident Prevention 003.01.07

The State Employees-Workers Compensation Division, Attorney General's Office, is proposing to amend Rules 003.01.07.010, .030, .043, and .044. The purpose of the amendments is to clarify and to provide continuity of thought for the addition of new rules in the same category. The new rules that the division is proposing, Rules .003.01.07.011, .012, .031, .032, and .033, will provide for interpretation of existing accident prevention rules and will establish procedure for formal hearings.

Public comment on the proposed amendments and rules is invited and should be addressed to Vernon T. Bartley, Director, Suite 301, 150 East Riverside Drive, Austin, Texas 78704.

These rules and amendments are proposed under the authority of Section 6, Article 8309g, Texas Civil Statutes.

.010. Enumeration of Rules. The following are adopted as [the] Accident Prevention Rules of the

Director, State Employees-Workers Compensation Division, Attorney General's Office:

[(1)] (a) The Occupational Safety and Health Standards, [of] Department of Labor, Occupational Safety and Health Administration, being:

(1) Part 1910 of Title 29, Code of Federal Regulations, *republished in its entirety* as of June 3, 1974, (commonly known as OSHA) and as it may be amended. [a. Volume 39, Number 122, of *Federal Register* being Part 2 of Part 1926, Construction Safety and Health Regulations dated June 24, 1974, and any amendments thereto.]

(2) *Part 1926 of Title 29, Code of Federal Regulations, Occupational Safety and Health Regulations for Contractor, republished in its entirety June 3, 1974, and any amendments thereto.*

[(2)] (b) The following occupational safety standards adopted as supplements to Texas Occupational Safety Act (Article 5182a, Vernon's Texas Civil Statutes):

- (1) External Lighting (11-112) - (1970)
- (2) Laundry and Dry Cleaning Equipment (11-119) - (1971)
- (3) Window Cleaning (11-124) - (1972)
- (4) Elevators, Dumbwaiters, Escalators, and Moving Walks. (11-125)- (1972)

.011. Interpretation of Director. Any adopted rule will be interpreted by the director so as to reflect the intent of the rule when applied to state agencies and employees.

.012. National Safety Council Guidelines. Hazards not covered by an existing rule will be treated in conformity with recognized national safety procedures and identified as such. Recommendations for correction will be made in keeping with National Safety Council guidelines and those of organizations referenced therein, all of which are legally incorporated by reference to this part and have same force and effect as other standards in this part.

.030. Request for Informal Hearing. *Within 90 days after a cited variance or violation, if in the opinion of an interested party, the hazard cannot be corrected with the means at hand or compliance would work an undue hardship or the involved agency does not believe it should be required to comply, notice shall be given the director and an informal hearing requested. If in the director's judgment, the protest is valid, appropriate relief will be determined and granted. If the matter cannot be disposed of by informal hearing, it will be scheduled for a formal hearing.*

[If in the director's judgment, immediate correction of any cited discrepancy or violation will work an undue hardship or injustice, a hearing will be held thereon and appropriate relief will be established.]

.031. Designation of Hearings.

(A) Informal hearings will be held by the accident prevention manager or alternate designated by the director.

(B) Formal hearings will be conducted by the director who shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence or amendments to pleadings.

.032. Hearing Procedures.

(A) Informal hearing will not require any written material other than the request for hearing which will state variance recommendation to be discussed and reason for requesting hearing.

(B) Formal hearing

(1) Request for formal hearing will be by written petition setting out:

- (I) subject matter
- (II) reason for request
- (III) itemization of evidence to be submitted
- (IV) list of witnesses who will appear
- (V) any alternate proposed solution to accident prevention recommendation.

(2) While written formal exceptions to a ruling of the director are not required, they shall be reduced to writing by party making same and filed with director before hearing is closed or concluded.

.033. Hearing Records. The record in a formal case shall include petition of applicant, supporting documents, response of accident prevention manager, transcript of proceedings, and director's ruling.

.043. Substitute Rule Request. The director will formulate and promulgate such substitute rule, standard, or regulation as he shall determine to be reasonable if need for same is established.

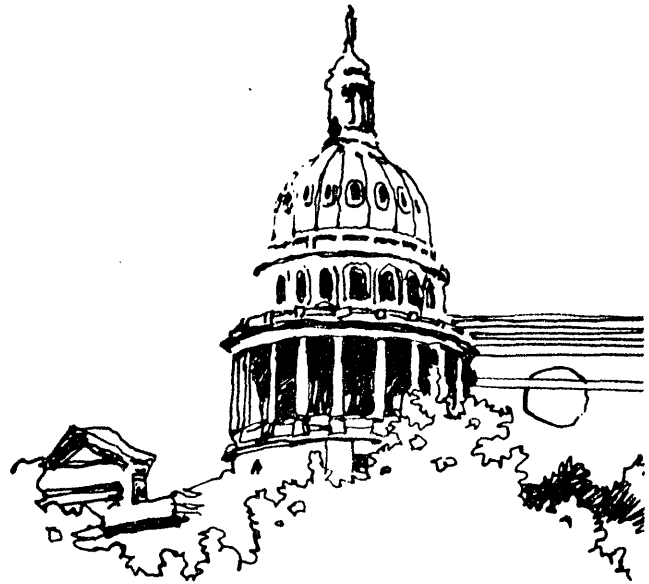
.044. Availability of Rules. Every rule, standard, or regulation adopted and every amendment, change, or repeal thereof shall be published and the director shall make same available for inspection and copying during normal business hours at the office of "division." [A copy will be furnished to the administrative heads of all state departments, boards, commissions and agencies affected.]

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762586 Vernon T. Bartley
 762587 State Employees-Workers
 Compensation Division
 Office of the Attorney General

Proposed Date of Adoption: June 17, 1976

For further information, please call (512) 475-8040.



Texas Health Facilities Commission

Health Systems Agency Rules of Review

Purpose 315.08.01

The Texas Health Facilities Commission is proposing to adopt Rule 315.08.01.001 for health systems agency recommendations regarding applications for certificate of need.

Section 3.08, Article 4418(h), Vernon's Annotated Civil Statutes, requires the Texas Health Facilities Commission to adopt rules for such health systems agency recommendations on applications for certificate of need.

Public comment on the proposed rule is invited and should be addressed to Michael R. Sharp, General Counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. Comments will be accepted until June 11, 1976.

A public hearing has been scheduled to receive testimony which is relevant and material to the adoption of the proposed rule. The hearing will be held on June 11, 1976, at 10 a.m., at the offices of the Texas Health Facilities Commission, Suite 407, One Highland Center, Austin, Texas.

This rule is proposed under the provisions of Section C, Article 4418(h), Annotated Civil Statutes.

.001. *Statutory Requirement.* Section 3.08, Article 4418(h), Vernon's Annotated Civil Statutes, provides for application review by the Texas Health Facilities Commission after an opportunity for written comments by a health systems agency (HSA) not later than the 45th day after the application for a certificate of need is dated by the chairman. Further, the act provides that such HSA review, if any, be conducted in accord with rules promulgated by the Texas Health Facilities Commission. The purpose of this document is to promulgate those rules required by Section 3.08(a), (b), and (c) in accord with Section 3.10(a), (b), and (c) of the act.

The adoption of these rules at this time has become necessitated by the requirement in Department of Health, Education, and Welfare regulations for health systems agencies that health systems agencies adopt criteria and rules within three months from the effective date of Conditional Designation Agreement (*Federal Register*, Volume 41, Number 60, Section 122.106b2, March 26, 1976). These rules will become final in a timely manner to meet the deadline for impending HEW designations of certain health systems agencies.

Issued in Austin, Texas, on May 14, 1976.

Doc. No. 762629 Melvin Rowland
Chairman
Texas Health Facilities
Commission

Proposed Date of Adoption: June 21, 1976

For further information, please call (512) 475-6940.

Definitions 315.08.02

The Texas Health Facilities Commission is proposing to adopt Rules 315.08.02.001-.013 for health systems agency recommendations regarding applications for certificate of need.

The purpose of these rules is to define important terms to be used by health systems agencies in making recommendations on applications for certificate of need.

Public comment on the proposed rules is invited and should be addressed to Michael R. Sharp, General Counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. Comments will be accepted until June 11, 1976.

A public hearing has been scheduled to receive testimony which is relevant and material to the adoption of the proposed rules. The hearing will be held on June 11, 1976, 10 a.m., at the offices of the Texas Health Facilities Commission, Suite 407, One Highland Center, Austin, Texas.

This rule is proposed under the provisions of Section C, Article 4418(h), Vernon's Annotated Civil Statutes.

.001. Definitions.

(a) "Act" means House Bill 2164 (Article 4418(h), Vernon's Annotated Civil Statutes) and the rules and regulations promulgated under the act.

(b) "Applicant" means any person who makes application for a certificate of need to the commission pursuant to the act and whose application copy has been forwarded to the HSA by the commission.

(c) "Application for a certificate of need" means a written request for consideration for a certificate of need by the commission pursuant to the act.

(d) "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by the act and by rule of the commission.

(e) "Commission" means the Texas Health Facilities Commission.

(f) "Computation of time" means that in computing any period of time prescribed or allowed by these rules, the period shall begin on the day after the event in question and conclude on the last day of such computed period.

(g) "Department" means the Texas Department of Health Resources.

(h) "Development" means those activities, other than planning or predevelopment activities, as determined by rule of the commission, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

(i) "Federal law" includes the National Health Planning and Resources Development Act of 1974 (P.L. 93-641), and Public Laws 79-725, 88-164, 89-749, 91-515, and 92-603, the federal rules and regulations promulgated under those acts, and other pertinent federal authority.

(j) "Hearing" means a public review of an application for a certificate of need where parties may

present evidence or testimony for or against said application for purposes of review and recommendation by an HSA.

(k) "Meeting" means a business meeting open to the public for a deliberative examination by the governing body or executive committee of an HSA for the purpose of making a recommendation on an application for a certificate of need or other matters requiring such meeting.

(l) "Party" means any person who by formal intervention or action as determined by rule of the commission participates in the review of a specific application for a certificate of need.

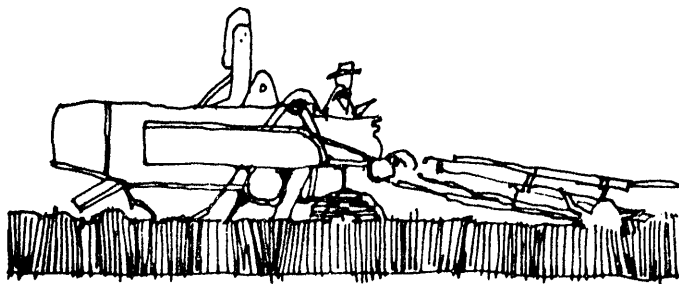
(m) "Person" means any individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, the federal government or a political subdivision or instrumentality of the federal government, any receiver, trustee, assignee, or other similar representative or any other legal entity.

Issued in Austin, Texas, on May 14, 1976

Doc. No. 762630 Melvin Rowland
Chairman
Texas Health Facilities
Commission

Proposed Date of Adoption: June 21, 1976

For further information, please call (512) 475-6940.



Regulatory Authority of Health Systems Agencies 315.08.03

The Texas Health Facilities Commission is proposing to adopt Rules 315.08.03.001-.007 for health systems agency recommendations regarding applications for certificate of need.

The purpose of these rules is to set out procedures to be followed by health systems agencies in preparing recommendations to the Texas Health Facilities Commission on applications for certificate of need.

Public comment on the proposed rules is invited and should be addressed to Michael R. Sharp, General Counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. Comments will be accepted until June 11, 1976.

A public hearing has been scheduled to receive testimony which is relevant and material to the adoption of the proposed rules. The hearing will be held on June 11, 1976, at 10 a.m., at the office of the Texas Health Facilities Commission, Suite 407, One Highland Center, Austin, Texas.

These rules are proposed under the provisions of Article 4418(h), Section C, Vernon's Annotated Civil Statutes.

.001. Scope of Review. A health systems agency may review an application for a certificate of need transmitted to it and may provide written comments to the commission and to the applicant not later than the 45th day after the day the application is dated.

.002. Beginning of Review. Upon receipt from the Texas Health Facilities Commission of a copy of an application for a certificate of need, the HSA shall determine whether to conduct a review. The HSA shall, within five days of receipt of an application for a certificate of need, give written notification of its intention to the applicant, the Texas Health Facilities Commission, and other persons, as provided by law.

.003. Schedule for the Review. Upon deciding to conduct a review, the health systems agency shall include a schedule for the review in its written notification of its intention to review, and the HSA shall send by certified mail a schedule for the review to the applicant and the Texas Health Facilities Commission.

The schedule for the review shall include at least:

- (1) a description of the proposed project including its location;
- (2) the manner in which reasonable notice of the schedule for the review will be provided to the public;
- (3) the date by which any person must file with the Texas Health Facilities Commission a request to become a party;
- (4) a proposed hearing time, date, and location; and
- (5) the date, time, and location of the public meeting at which the governing body (or by designation, the executive committee) intends to make a recommendation on the proposed project.

.004. Hearings.

(a) Necessity of a hearing. A public hearing must be held if timely requested by the applicant or any other party to the application.

(b) Location of public hearing. Hearings must be open to the public and held at an accessible location within the health systems area.

(c) Presiding officers at a hearing. Hearings must be conducted by not less than three members of the governing body. These members shall:

- (1) keep and maintain a complete record of the hearing;
- (2) insure that all testimony is given under oath;
- (3) afford each party the opportunity to cross-examine all evidence, including staff reports or memoranda bearing upon the project; and
- (4) prepare a proposed written recommendation which shall contain specific proposed findings of fact drawn from facts presented on said application for a certificate of need and which shall be presented to the governing body (or if designated the executive committee).

.005. Recommendation of the Health Systems Agency to the Texas Health Facilities Commission.

(a) Entering a recommendation. A recommendation must be in writing and shall be entered in a meeting of the governing body (or if designated, the executive committee).

(b) Contents of a recommendation. The recommendation must include:

- (1) the recommendation to approve or disapprove the proposed project;
- (2) findings drawn from facts presented on said application for a certificate of need which support the governing body's recommendation to approve or disapprove the proposed project. (A finding of fact shall not be supported by:
 - (a) unsworn facts,
 - (b) facts beyond the personal knowledge of the person testifying, or facts upon which a reasonable person would not rely in the conduct of his affairs, and
 - (c) facts which have not been available to the applicant or any other party for cross-examination.)
- (3) a statement of the evidence received or considered;
- (4) a statement of matters officially noticed (i.e. the State Health Plan);
- (5) objections and rulings thereon;
- (6) staff memoranda submitted or considered; and
- (7) the proposed written recommendation of the governing body members who have conducted any hearing on the proposed project.

.006. Submission of a Health Systems Agency Recommendation to the Texas Health Facilities Commission. A recommendation of a health systems agency must be received at the office of the Texas Health Facilities Commission in Austin, Texas, by 5 p.m. on the 45th day after the day the application for a certificate of need is dated by the chairman.

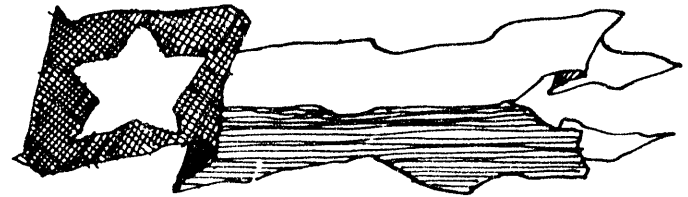
.007. Data. The health systems agency will consider and take official notice of any commission form data provided to it regarding a specific project.

Issued in Austin, Texas, on May 14, 1976.

Doc. No. 762631 Melvin Rowland
Chairman
Texas Health Facilities
Commission

Proposed Date of Adoption: June 21, 1976

For further information, please call (512) 475-6940.

**Criteria 315.08.04**

The Texas Health Facilities Commission is proposing to adopt Rules 315.08.04.001-.003 for health systems agency recommendations regarding applications for certificate of need.

The purpose of these rules is to establish consistent statewide criteria to be used by health systems agencies in making recommendations to the Texas Health Facilities Commission on applications for certificate of need.

Public comment on the proposed rules is invited and should be addressed to Michael R. Sharp, General Counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761. Comments will be accepted until June 11, 1976.

A public hearing has been scheduled to receive testimony which is relevant and material to the adoption of the proposed rules. The hearing will be held on June 11, 1976, 10 a.m., at the offices of the Texas Health Facilities Commission, Suite 407, One Highland Center, Austin, Texas.

These rules are proposed under the provisions of Section C, Article 4418(h), Vernon's Annotated Civil Statutes.

.001. Authority and Provision for Amendment. The Texas Health Planning and Development Act, [Article 4418(h), Vernon's Annotated Civil Statutes] provides that the review of proposed projects covered by this act for determination of certificate of need be conducted pursuant to criteria established in the act and through commission rule (Section 3.10(a), (b), and (c), Article 4418(h)).

Any amendment(s) to, or changes otherwise, effected by state legislative or commission action to criteria are subject to incorporation in these HSA rules through amendment or other action as deemed appropriate by the commission.

.002. Criteria for HSA Review of Transmitted Application. The following criteria shall be utilized, as applicable, in an HSA review of applications for a certificate of need. These criteria are adopted pursuant to requirements set forth in Section 3.10, Article 4418(h), Vernon's Annotated Civil Statutes.

General:

(a) **Basic elements of review.** In review of an application for a certificate of need by an HSA, the HSA shall consider comparable area facilities/services, the available manpower, and the cost elements of those projects in comparison with other like projects within the area proposed to be served.

(b) **Geographical areas of data presentation.** For each application for a certificate of need the basic geographical area of consideration will be the county. For each application for a certificate of need like data shall be considered for: Hill Burton Service Area, Regional Planning Council, Health Service Area, and state totals.

(c) **Comparable area facilities.** For each applicant the HSA shall consider the most current information for like facilities, and/or like facilities offering identical services, for comparison.

(d) **Available manpower.** For each applicant proposing a new or modified facility and/or new or expanded service the HSA shall consider the most current inventory of manpower specialties available to support the proposed project.

(e) **Cost analysis.** Each proposed facility and/or service application for a certificate of need will be evaluated on a cost basis utilizing applicant data and Texas Department of Health Resources data for the proposed area of location.

Need demand:

(a) Whether a proposed project is necessary to meet the health care needs of the community or population to be served. The HSA shall examine each application for a certificate of need to determine, within the perspective of all other existing or approved facilities and services available to the population proposed to be served by an applicant, whether or not additional facilities and/or services are required to provide reasonable health care capability for the proposed area of location.

(b) **Population.** Total population will be examined for each applicant by standard areas for the 1960, 1970, and projected 1980 populations. The 1960 and 1970 populations to be used will be the U.S. census count. The 1980 population will be those projected. Within the 1970 and 1980 populations, population groups will be examined from ages 0-14; by male and female respectively for ages 15-44 and ages 45-64; and total population for age 65 and over. Additional factors for consideration will be growth rate from 1960 to 1970 and estimated growth rate from 1970 to 1980. Density of population, dependency ratio, and mean family size will be considered within the population sector.

(c) **Vital rates.** Vital statistics used by the HSA shall be those maintained by the Texas Department of Health Resources and made available through the commission. Birth rates in the proposed area of service will be collated with the projected population rates prescribed herein. Death rates will be examined for the following: (1) total; (2) neonatal; (3) cardiovascular; (4) cancer; and (5) renal within the context of utilization of facilities and services and as an indicator of the need for services and/or facilities to care for a specific disease.

(d) **Existing and/or approved facilities and services.** The HSA shall examine data pertaining to all existing and/or approved facilities or services based upon licensing and/or other authoritative approval sources. All facilities will be examined on the basis of licensed and surveyed bed capacity for hospitals and nursing homes and/or other facilities utilizing beds as a means of providing patient care. The examination shall include the utilization rate of the licensed and surveyed bed capacity as reported by the Texas Department of Health Resources. Within the total bed capacity of existing facilities, comparisons will be effected for hospitals by the number of beds, by service type, and for nursing homes by the number of licensed and surveyed beds for the levels of care provided.

For service data the numbers of procedures within a facility will be compared by the standard geographical levels previously identified for at least the following procedures and services: (1) inpatient surgery, (2) orthovoltage therapy, (3) physical therapy, (4) renal dialysis, (5) kidney transplant, (6) outpatient surgery,

(7) megavoltage therapy, (8) inhalation therapy, (9) open heart surgery, (10) burn care, (11) tumor registries, (12) communicable diseases, (13) chronic diseases, (14) dental health services, (15) alcohol outpatient treatment, (16) methadone outpatient treatment, (17) MH/MR-county and state, (18) blood center services, and (19) drug abuse outpatient treatment.

In comparison of population, facilities, and procedures, analysis will be effected to determine whether or not the proposed facility or service is required to meet reasonable health care capabilities for the proposed clientele to be served.

(e) Accessibility of service and facility in travel time (when available). Each application for a certificate of need for a facility or service shall be examined for its accessibility to the population proposed for service by travel time. The elements to be examined will be the average driving time to the facility for 40 percent, 70 percent and 90 percent of the population of the respective areas to be provided service within the county and/or the Hill Burton area only.

(f) Utilization of facilities/services. For each application for a certificate of need the HSA shall examine the utilization of comparable facilities or services within the standard prescribed areas. In the case of facilities, utilization rates for the licensed bed capacities of all facilities of comparable type shall be examined from the particular application under consideration. For services, comparison shall be effected for all like services within the prescribed standard areas. In particular, emphasis will be placed on the utilization rate of an existing facility or facilities as determined by the licensed and surveyed bed capacity of the facility within the area of comparison for special facilities/services.

Manpower:

(a) Manpower availability and requirements. The HSA shall consider for each application for a certificate of need before it, for a facility or services, the ability of the applicant to obtain required manpower necessary for the delivery of health services.

(b) General medicine and physician specialties. In consideration of applications for a certificate of need before it the HSA shall consider the available M.D.'s, D.O.'s, dentists, pharmacists, chiropractors, podiatrists, optometrists, and registered and licensed vocational nurses. The ratios of available practitioners per capita shall be determined in comparisons effected within identified areas. Availability of physician specialties will be considered. Critical shortages of physicians and dentists will be considered by the HSA in effecting its recommendation. The HSA will compare allopathic and osteopathic physicians specialties as defined by the American Medical Association and the American Osteopathic Association.

(c) Allied health professionals. For each proposed facility or service, the available and required allied health professionals will be identified in the five geographical areas of comparison identified. In the event that shortages within special categories required to support the proposed facility and/or service are apparent, the applicant will be required to provide to the HSA convincing assurance that sufficient manpower will be available at the time of the proposed beginning of operation of the facility and/or service. In particular the identification of critical physician and dentist shortage areas will require reasonable assurance that physicians and allied health professionals for the service and facility will be available.

(d) Other considerations. Existing ratios in the standard areas will be considered for physicians per square mile; population per physician; as well as critical shortage factors. Similarly, for new services proposed, comparisons will be evaluated and ratios per square mile and per population will be considered for allied health professionals required to support physicians in the health delivery system.

Economic feasibility:

(a) Whether the cost of the proposed project is economically feasible. The HSA shall review each application for a certificate of need submitted for proposed patient care cost to include facility, equipment, estimated revenue sources, and the economic indicators of the population to be served. The HSA, as appropriate, shall review the availability of less costly or more effective alternatives of providing services.

(b) Facilities. The HSA may when available consider each proposed construction application for a certificate of need for proposed cost of the facility relative to other like facilities within the areas identified. Common cost and other indicators to be utilized will be beds, per unit cost, per square foot, or unit cost per estimated patient day. Cost factors to be included will reflect but not be limited to: construction, equipment, administrative and professional services, and patient visits.

(c) Services. Cost of service considered will include, but not be limited to, the amount of the prorated share of facility cost necessary for the delivery of the procedure and/or services; the initial cost of equipment and the depreciated cost over the useful life span of the equipment; equipment which will be necessary for new services; and the professional allied health manpower and administrative overhead cost.

(d) Revenue sources. In examining economic feasibility of a project the HSA shall consider the expected revenue sources as proposed by the applicant. Major categories of revenue sources, include, but are not limited to, social security benefits, federal and state grants, medicare and medicaid benefits, insurance, and

private payment. The relevance of the revenue sources for each project will depend on the nature of the clientele to be served.

(e) Population economic indicators. For each application for a certificate of need under review by the HSA, economic indicators of the population proposed to be served will be evaluated. Percentages of families within the following income groups will be considered: under \$1,000; \$1,000-\$3,999; \$4,000-\$5,999; \$6,000-\$9,999; \$10,000-\$14,999; \$15,000 and over. Median family income will be evaluated for the respective standard geographical areas. Comparisons will be made of the retail sales, assessed value and estimated income for taxation by area counties, and the most recent available employment statistics for the service area proposed. Health care cost indicators will be utilized to include hospital revenue for amount and number of facilities; hospital expenses for amount and number of facilities; expenses per patient day; estimated surplus; and hospital assets per capita. Additional factors will include health benefit coverage to include social security for benefits per thousand and number covered; benefits per capita; social security, medicare hospital and medicare supplementary sources of income; welfare inpatient; welfare outpatient; and local coverage.

Special needs-- rural:

(a) Whether a proposed project meets its special needs and circumstances for a rural area sparsely populated. In the consideration of needs of rural sparsely populated areas and with respect to the health service delivery capability, certain indicators are particularly salient. Points for consideration are: density of population, ratio of physicians and allied health manpower per capita, the transportation network, the economic and demographic factors of the population to be served and the industrial and economic base of the area under consideration.

(b) Ratios of physicians and allied health manpower. Significant deviations below state norms and averages will be expected and may be acceptable in considering projects proposed for areas which are rural or sparsely populated.

(c) Transportation. In considering rural or sparsely-populated areas, the HSA will give particular attention to the capability for transport of clients in need of medical and/or health services.

(d) Economic and demographic characteristics of the area. Special consideration will be given to the economic capability of a rural, sparsely-populated area to support the proposed operation. The revenue sources necessary to support a proposed project in an economically feasible manner are of particular significance.

Special services:

(a) Any special project will be evaluated on the basis of the unique circumstances pertaining to the pro-

ject and comparison by geographical area as previously described.

(b) Particular emphasis will be given to the availability of the unique characteristics of special projects as pertains to allied health manpower and physicians necessary to effect the efficient delivery of health services for a prescribed project.

(c) Special cost considerations will be applied to special projects and facilities which take into account the unique features of the project under consideration.

Relationship of long-range development plans:

The HSA shall consider long-range development plans (if any) of the person providing or proposing services.

Relationship of proposed project to state plans:

The relationship of a proposed project to the state health plans, state medical facilities plans, and the health system agency annual implementation plan shall be considered carefully. Every applicant shall address the relationship of the project to pertinent existing plans and shall meet the burden of demonstrating compliance with such plan(s) or the special circumstances that may justify an affirmative recommendation where the plan(s) conflict with said project.

Service to indigents:

The HSA shall consider the special needs and circumstances of facilities proposing substantial service to indigents.

Special need and circumstances of facility providing substantial portion of services to persons residing outside area facility location:

Certain facilities provide unique services to clients residing outside the immediate vicinity. The HSA will carefully evaluate the special needs and circumstances of those entities which provide substantial services or resources, or both, to individuals not residing in the health service areas in which the entities are located. Such entities may include medical and other health professions, schools, multidisciplinary clinics and specialty centers.

Potential effects of proposed project on existing facility:

(a) Each project proposed shall be evaluated with respect to its effect upon existing like or similar projects within the proposed area of location.

(b) Like facilities will be compared to determine the impact of the addition of the services and/or capacity proposed by the application. Particular attention will be devoted to the availability of physicians and other practitioners of the healing arts and the allied health manpower necessary to perform the proposed services. Particular attention will be given to the cost analysis of the impact of the proposed new service or facility within the area, given the constraints of the available manpower presently existing within the proposed area to be considered.

(c) Review of a proposed project will consider duplication of like service and the increasing demand for physicians and allied health manpower within the constraint of presently available manpower.

Special needs and circumstances of Health Maintenance Organizations:

The HSA shall take into consideration the uniqueness of Health Maintenance Organizations (HMO's) including the basic elements of the above criteria and the HMO's organizational and financial structure.

Criteria to be utilized in evaluating applications for certificates of need for the acquisition and operation of computerized axial tomographic scanners, with the exception of single purpose brain scanners:

(a) Maximum physical accessibility and availability of the equipment to large populations with medical conditions reasonably susceptible to diagnosis through use of the equipment.

(b) The capability of the operation of said equipment to be economically self-sustaining.

(c) The ability of appropriate staff to make evaluations of the application of said equipment.

(d) The willingness of the facility and staff to make frequent, periodic statistical reports to the commission and fully share with the commission information regarding the applications, economics, and operations of such equipment.

(e) The willingness and capability of an applicant to provide assistance in the areas of professional and technical training to facilities subsequently acquiring such equipment.

(f) The ability to provide for and maintain adequately trained technical personnel.

.003. *Provision for Supplementary HSA Criteria.* Criteria, beyond those required by Article 4418(h), Vernon's Annotated Civil Statutes and specified herein, may be promulgated and adopted for use by a Health Systems Agency in the review of transmitted applications for certificate of need. The formulation and application of additional criteria shall be consistent with criteria in the act and in commission rules. Further, these additional criteria shall not be inconsistent with fair and objective application reviews by the HSA and as provided for in Article 4418(h), Vernon's Annotated Civil Statutes, and shall not be adopted without prior approval of the Texas Health Facilities Commission.

Issued in Austin, Texas, on May 14, 1976.

Doc. No. 762632 Melvin Rowland
Chairman
Texas Health Facilities
Commission

Proposed Date of Adoption: June 21, 1976

For further information, please call (512) 475-6940.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

Numbering System-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

Symbology-- Changes to existing material are indicated in *bold italics*. [Brackets] indicate deletion of existing material.

Texas Education Agency Adaptations for Special Populations Gifted and Talented 226.35.31

The State Board of Education has amended Rule 226.35.31.010 concerning educational programs for gifted and talented students. Public testimony on the proposed rule was heard at the State Board of Education meeting, May 8, 1976. The amendment was adopted with one change in the proposed text. In the administrative procedure portion of the rule, Section (a)(1) was amended to read "the development of criteria for the identification of gifted and talented students" instead of "criteria for the identification of gifts and talents of students" as was proposed. With this exception the rule was adopted without change.

These rules are promulgated under the authority of Section 11.19, Texas Education Code.

.010 Educational Programs for Gifted and Talented Students.

(a) Right to educational opportunity for gifted and talented students. The basis for making special provisions for gifted and talented students shall be

founded on the belief that all children are entitled to full recognition of their right to educational opportunity commensurate with their capability for learning and their special talents.

(b) Authorization and description of educational programs for gifted and talented students. Educational programs for gifted and talented students may be provided throughout all grade levels.

School districts may make adaptations in elementary and secondary curriculum, instruction, and school organization for identified gifted and talented students. Adaptations shall be reported annually to the Texas Education Agency.

The instructional provision for gifted and talented students may provide for the granting of credit or advanced standing, or both, to pupils of recognized ability in secondary school subjects.

(c) Identification of gifted and talented students. Gifted and talented students are those students with extraordinary learning or leadership ability or outstanding talent in the creative or vocational arts whose development requires programs or services beyond the level of those ordinarily provided in regular school programs. Gifted and talented are a special pupil population who exhibit one or more of such characteristics as superior academic achievement or ability, talent in any of the aesthetic areas (such as art, music, and drama), mechanical ability, potential for leadership, and qualities of creativity.

(d) Requirement of state plan for gifted and talented students. The state plan shall be developed by the Commissioner of Education for approval of the State Board of Education. The state plan shall provide for the provision and coordination of programs for gifted and talented students on an annual basis.

(e) Demonstration programs. The Commissioner of Education, with the approval of the State Board of Education, may establish demonstration programs for the education of gifted and talented students in various regions of the state. The cost per student of the programs over and above the cost per student covered by the foundation school program in each district shall be borne by the state and each participating district on the same percentage basis applicable to financing the foundation school program within the district. The total cost to the state for all demonstration programs conducted during each academic year may not exceed amounts specified by law.

Administrative Procedure

The Division of Education for the Gifted and Talented has the primary responsibility for the administration of education programs for gifted and talented students.

(a) State plan for gifted and talented students. The state plan for gifted and talented students shall include the following:

(1) the development of criteria for the identification of gifted and talented students;

(2) the development and intra-agency coordination of instructional programs and techniques designed to meet the individual needs of gifted and talented students in all educational fields;

(3) the development of training programs for professional personnel involved with the education of gifted and talented students;

(4) coordination of all state, federal, and local resources available for the education of the gifted and talented; and

(5) a statement of the objectives of the program, the methods to be used in obtaining the objectives of the program, and the methods to be used in assessing the results.

(b) **Demonstration programs.** A school district or a combination of school districts desiring to participate in a demonstration program for the education of the gifted and talented shall submit to the Commissioner of Education a detailed plan describing the gifted or talented students to be served, the objectives and methods of obtaining the objectives for the proposed program, and the method of assessing the results of the program. All proposed demonstration programs will be reviewed by the Advisory Council on the Education of the Gifted and Talented prior to submission by the Commissioner of Education to the State Board of Education for approval.

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762609 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.

Gifted 226.35.32

The State Board of Education has repealed Rule 226.35.32.010 concerning the identification of gifted students. The rule has been incorporated, with changes, into Rule 226.35.31.010 as Section (c) of that rule.

This rule was promulgated under the authority of Section 11.19, Texas Education Code.

.010. Identification of Gifted Students.

Policy

"Gifted Students" are those students who exhibit one or more of such characteristics as superior academic

achievement or ability, talent in any of the aesthetic areas (such as art, music, and drama) mechanical ability, potential for leadership, and qualities of creativity.

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762610 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.

Gifted and Talented-- Advisory Councils 226.35.32

The State Board of Education has adopted Rule 226.35.32.011, creating a State Advisory Council on the education of the gifted and talented and allowing regional advisory councils on the education of the gifted and talented. Public testimony on the proposed rule was heard and public discussions were held. The rule was adopted with no change in the proposed text.

These rules are promulgated under the authority of Section 11.19, Texas Education Code.

.011. Advisory Councils on Education of Gifted and Talented.

Policy

(a) **State advisory council.** There shall be a state advisory council on the education of the gifted and talented, composed of nine citizens of the state who have demonstrated a competence for and an interest in the development of programs for the gifted and talented. Four members of the council shall be appointed by the governor and five members shall be appointed by the Commissioner of Education with approval of the State Board of Education.

(b) **Regional advisory councils.** The Commissioner of Education may appoint regional advisory councils on education of the gifted and talented in each of the regional education service centers to assist in the implementation of the state program at the local level.

Administrative Procedure

(a) **State advisory council.** Members of the state advisory council will serve for terms of two years without compensation but are entitled to reimbursement for actual expenses incurred in carrying out the work of the council. Council members will select a chairman who will convene the council not less than four times a year. A staff member of the Division of Education of

Gifted and Talented shall be designated to act as executive secretary of the council and will furnish all clerical assistance necessary for the council to carry out its responsibilities.

The council will assist in developing the state plan for the education of the gifted and talented. All proposed rules and regulations relating to the program will be presented to the council for review and comment prior to State Board of Education approval.

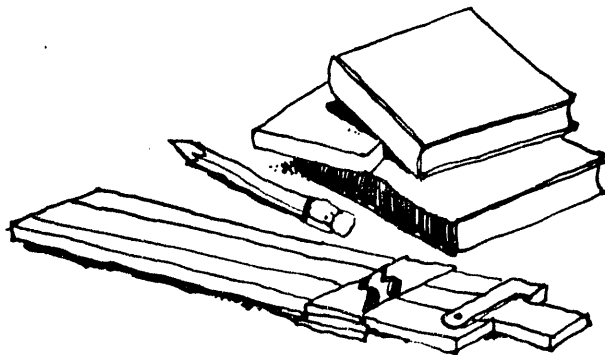
(b) Regional advisory councils. (To be developed).

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762611 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.



This rule is promulgated under the authority of Section 11.25(f) and Section 11.26(a)(5), Texas Education Code. The amended text reads as follows:

.010. State Commission on School Accreditation. The State Commission on School Accreditation shall review the educational programs of the public schools annually and determine whether districts are meeting their responsibility for providing a comprehensive instructional program in terms of the principles and standards in Rule 226.37.12.010. The State Commission of School Accreditation shall provide for school systems to have the opportunity, through their representatives, to participate in the planning and operation of the accreditation program.

The commission shall be composed of 12 members: three shall be administrators and three shall be board members as follows: one school administrator and one school board member from school districts of less than 10,000 in average daily attendance (ADA); one school administrator and one school board member from school districts having 10,000 to 50,000 in ADA; and one administrator and one school board member from school districts having more than 50,000 in ADA. The other six members shall consist of two principals, two classroom teachers, and two representatives from colleges or universities. Each member shall be appointed by the State Commissioner of Education subject to confirmation of the State Board of Education.

The responsibilities of the commission shall include:

(1) making recommendations to the commissioner and the State Board of Education concerning standards for school accreditation and policies for applying these standards;

(2) advising the staff of the Division of School Accreditation concerning application of standards to the school systems of the state and development of new materials relating to school accreditation;

(3) receiving the reports of the director of the Division of School Accreditation concerning the status of accreditation in individual school districts;

(4) hearing complaints from any school that is not satisfied with the rulings and recommendations of the director of the Division of School Accreditation; and

(5) making recommendations to the director for submission to the commissioner and to the board concerning action to be taken on the reports.

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762612 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.

Planning and Evaluation

Accreditation 226.37.14

The State Board of Education has amended Rule 226.37.14.010 concerning the State Commission on School Accreditation. Public discussion and review of the proposed changes were held. There were two changes in the proposed text. In Section (4) the phrase "hearing complaints" was changed to "providing a forum for the informal resolution of complaints" and in Section (5) recommendations are to be made to the commissioner rather than to the Director of School Accreditation.

Public School Finance-- Pupils

Pupil Attendance Accounting 226.44.01

The State Board of Education has amended Section 5 of the administrative procedure part of Rule 226.44.01.010 concerning pupil attendance accounting. Public discussion and review of the proposed amendment were held. The amendment was adopted with no changes in the proposed text. The rest of the rule remains unchanged.

This rule is promulgated under the authority of Section 16.005 and Chapters 16 and 21 of the Texas Education Code. The text reads as follows:

.010. Requirements of Pupil Attendance Accounting for State Funding Purposes.

Administrative Procedures

(5) When classroom instruction is organized on a departmentalized basis, a central attendance accounting system must be used and attendance determined for Foundation School Program funding purposes by recording absences once a day.

(5-1) If the school day is organized on a six-period-per-day schedule, the attendance may be determined by the absences recorded in the second or fifth period. If a school day is organized on other than a six-period-per-day schedule, attendance may also be determined by recording absences for the second or fifth period or permission may be obtained from the Texas Education Agency for an alternate period to record absences.

(5-2) Pupils absent at the time the attendance roll is taken, during the daily period selected, are counted absent for the entire day. Pupils present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day.

(5-3) Pupils enrolled on a half-day basis earn only one half-day of attendance each school day. Attendance is determined for these pupils by recording absences on a period during the half-day that they are scheduled to be present.

(5-4) The established period in which absences are recorded may not be changed during the school year.

Issued in Austin, Texas, on May 11, 1976.

Doc. No. 782613 M. L. Brockett
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.



Public School Finance-- Personnel

Personnel Accounting 226.45.01

The State Board of Education has amended the administrative procedure section of Rule 226.45.01.010 concerning personnel accounting for state funding purposes. The only change occurs in Item (1) where the minimum employment required for a year of experience for salary increment purposes is outlined.

Public discussion and review of the proposed amendment were held. The amendment was adopted with no change in the proposed text.

This rule is promulgated under the authority of Section 16.005 and Chapter 13, Texas Education Code. The amended text is shown below:

.010. Requirements of Personnel Accounting for State Funding Purposes.

Administrative Procedure

(1) The minimum employment required for a year of experience for salary increment purposes is:

(1-1) Prior to the 1972-73 school year: Employment on a fulltime basis for at least 4-1/2 months (90 days of instruction, three six-week periods, or one full semester during the scholastic school year).

(1-2) During the 1972-73 and 1973-74 school years only: Employment on a fulltime basis for at least 4-1/2 months (90 days of instruction and inservice training) in any one scholastic school year.

(1-3) Beginning with the 1974-75 school year: Employment for 100 percent of the day for at least 90 days of the school term. Employment in a Texas public school district as a teacher or other professional employee for at least 50 percent of the day for 180 days or more during the school term.

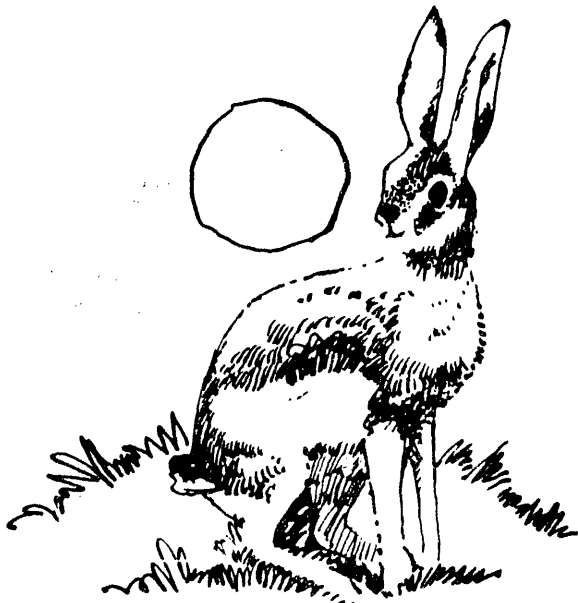
(1-4) Beginning with the 1975-76 school year: Employment in a Texas public school district in a position authorized in Section 16.056(b), Texas Education Code, for at least 50 percent of the day for 180 days or more during the school term, or employment with an acceptable entity for 100 percent of the day for at least 90 days of the school term.

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762614 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.



Teacher Certification

Requirements for Teacher Certificates 226.62.03

The State Board of Education has amended Section (d-f) of Rule 226.62.03.020, which is concerned with certification requirements for librarians. Other sections of the rule remain unchanged.

Public discussions and review of the proposal were held. The amended rule was adopted with no change in the proposed text.

This rule is promulgated under the authority of Section 13.034, Chapter 13, of the Texas Education Code.

.020. Specific Requirements for Teacher Certification by Class and by Level Including Areas of Specialization and Endorsement.

Administrative Procedure

(d-f) Requirements for professional learning resources specialist certificate.

(d-f-a) An applicant for a professional all-level learning resources specialist must have:

- (1) bachelor's degree from an accredited institution;
- (2) valid teacher's certificate;
- (3) basic understanding of multi-cultural and multi-ethnic elements in society;
- (4) a recommendation from an accredited institution;

(5) completed an approved program of not less than 36 semester hours of which 27 semester hours shall be graduate level; the program shall include a 21-semester-hour specialization area of which three semester hours shall be a practicum, or 21 semester hours and one year of experience as a full-time public school librarian; the program shall include:

(5-1) Specialization area-- a minimum of 21 semester hours, at least 12 of which shall be graduate level and three of which shall be a practicum, or 21 semester hours and one year of experience as a full-time public school librarian. This 21-semester-hour block shall develop basic competencies in:

(5-1-1) selection, evaluation, and acquisition of materials in all formats including multi-cultural and multi-ethnic materials;

(5-1-2) processing and organization of a unified collection of materials;

(5-1-3) instructional design and development;

(5-1-4) learning resources center organization and administration;

(5-1-5) local production of instructional materials;

(5-1-6) materials for children and young adults and utilization practices;

(5-1-7) reference and bibliography;

(5-2) Resource area-- a minimum of six semester hours of graduate level courses which will strengthen the specialization or professional education components of the student's learning experience, selected from such areas as:

(5-2-1) instructional design;

(5-2-2) communications;

(5-2-3) advanced local production of instructional materials;

(5-2-4) research (interpretation and application);

(5-2-5) statistics;

(5-2-6) program planning and development;

- needs;
- (5-2-7) management;
 - (5-2-8) information networks;
 - (5-2-9) human relations;
 - (5-2-10) client groups and information
- ground of individual students;
- (5-2-11) automation;
 - (5-2-12) cognate courses based on back-
- ground of individual students;
- (5-3) Professional education area-- a minimum of six semester hours of graduate courses, three of which shall be in the area of curriculum development and design, and three of which may include but not be limited to:
 - (5-3-1) psychology;
 - (5-3-2) learning theory;
 - (5-3-3) educational systems;
 - (5-3-4) organization of education;
 - (5-3-5) education in society, including multi-cultural and multi-ethnic elements;
 - (6) completed a minimum of three years of successful teaching experience.
- (d-f-b) An applicant for an all-level learning resources endorsement must have:
- (1) bachelor's degree from an accredited institution;
 - (2) valid teacher's certificate;
 - (3) basic understanding of multi-cultural and multi-ethnic elements in society;
 - (4) a recommendation from an accredited institution;
 - (5) 21 semester hours, at least 12 of which shall be graduate level and three of which shall be a practicum, or 21 semester hours and one year of experience as a full-time public school librarian, to develop basic competencies in the following areas:
 - (5-1) selection, evaluation, and acquisition of materials in all formats including multi-cultural and multi-ethnic materials;
 - (5-2) processing and organization of a unified collection of materials;
 - (5-3) instructional design and development;
 - (5-4) learning resources center organization and administration;
 - (5-5) local production of instructional materials;
 - (5-6) materials for children and young adults and utilization practices;
 - (5-7) reference and bibliography.

Note: An individual who currently holds the provisional or professional librarian certificate or who completes such certificate programs by August 31, 1979, in fulfillment of the requirements for assignment as a librarian under the Texas Public School Finance Plan (House Bill 1126, 64th Legislature), shall be deemed au-

tomatically to have, for assignment purposes, the equivalent of:

- (a) the new learning resources endorsement based upon the provisional librarian certificate, or
- (b) the new learning resources specialist certificate based upon the professional librarian certificate.

No application or overt action is necessary to obtain the equivalency status. Current librarian preparation programs are to be completed and certificates are to be applied for by August 31, 1979.

Issued in Austin, Texas, on May 11, 1976.

Doc. No. 762615 M. L. Brockett
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.

Advisory Groups

Identifying and Appointing Advisory Groups 226.73.01

The State Board of Education has amended Rule 226.73.01.010, concerning official advisory groups and procedures for their appointment. Under the amended rule, no State Board of Education member shall serve on advisory councils, committees, or commissions unless specifically authorized by statute. Public discussion of the proposed change was held.

The amendment was adopted with three changes in the proposed text. Provision (2) of the administrative procedure portion of the rule was reworded to show clearly that board members who serve on committees (by statute) shall be recommended by the chairman and confirmed by the board. A final paragraph was added to the policy to indicate that exceptions to the policy may be permitted by the board resolution. The administrative procedure section also refers to the possibility of exception by board resolution.

This rule is promulgated under the authority of Section 11.25(f), Texas Education Code. The amended version is shown below:

.010. Official Advisory Groups and Procedures for Their Appointment.

Policy

Official advisory groups are commissions, councils, or committees whose individual membership or participation is approved by the State Board of Education, the Commissioner of Education (Policy 1202.2), or as designated by specific statute.

Each official advisory group recommended to the State Board of Education for approval, except as otherwise provided by applicable law, shall, within its size, scope, and objectives:

(1) represent the public with respect to a range of school sizes and regional service center areas and shall not have more than one member from a congressional district unless the composition imposes membership related to a specific office held or other agency representation;

(2) no appointments to an advisory group shall be recommended by the Commissioner of Education without consultation with the state board member representing the congressional district from which the candidate is being recommended;

(3) have a specifically defined purpose and set of objectives, defined length of service, number of annual meetings, and expiration date of the advisory group unless set otherwise by statute;

(4) minutes of each such advisory group shall be filed with the Commissioner of Education.

One month prior to State Board of Education consideration of nominees by appearance on the preliminary agenda and notice of meeting appearing in the *Texas Register*, the commissioner will circulate to the board the names of proposed candidates meeting the criteria set forth in 7301.1, a biographical sketch of each nominee, and the specific use to be made of the information developed by the advisory group.

The Commissioner of Education shall administer regulations, as approved by the State Board of Education, regarding the appointment and use of advisory groups.

No State Board of Education member shall serve on State Board of Education advisory councils, committees, or commissions unless otherwise specifically authorized by statute.

The board may, by resolution, permit exceptions to the provisions of this policy as deemed necessary.

Administrative Procedures

The appointments and use of advisory groups except as otherwise provided by applicable law are in accordance with the following provisions:

(1) Each advisory group member shall be a person selected because of individual ability to offer sound

and constructive advice. Only in cases when unusual justification exists will members of advisory groups be appointed *ex officio*.

(2) Membership of all advisory groups, except those established to serve exclusively the responsibility of the State Board of Education (example: Investment Advisory Committee) and board members who serve on advisory groups, shall be recommended by the Commissioner of Education and confirmed by the board. Membership of advisory groups to serve the board exclusively and board members on any committees when such membership is specifically directed by statute shall be recommended by the chairman and confirmed by the board.

(3) The State Board of Education shall authorize each advisory group prior to its establishment and shall determine, with the advice of the Commissioner of Education, its tenure. A continuing advisory group shall have membership appointed for three-year terms, subject to one reappointment, staggered so that the terms of one-third of the advisory group membership shall expire each year. Membership on a temporary advisory group shall be appointed for the duration of their designated task.

(4) Membership of an advisory group shall not exceed 15 members, including State Board of Education members where authorized by statute, unless unusual needs as determined by the board require larger representation.

(5) Special temporary committees to assist the Board of Examiners for Teacher Education shall consist of three to five members of that board, and not more than six additional members.

Issued in Austin, Texas, on May 10, 1976.

Doc. No. 762616 M. L. Brockette
Commissioner of Education

Effective Date: June 2, 1976

For further information, please call (512) 475-2268.

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes the date and time of filing. Notices are posted on the bulletin board outside the offices of the Secretary of State on the first floor in the East Wing of the State Capitol.

Texas Conservation Foundation

Meeting

A meeting of the members of the Texas Conservation Foundation will be held on Tuesday, May 25, 1976, noon, at the Texas Historical Commission Building, North Colorado and West 16th Streets, Austin, to discuss existing rules and regulations and to appoint committees to consider future foundation guidelines.

Additional information may be obtained from Clayton T. Garrison, John H. Reagan Building, Austin, Texas 78701, telephone (512) 475-3117.

Filed: May 13, 1976, 2:55 p.m.

Doc. No. 762617

Texas State Board of Dental Examiners

Meeting

A meeting of the Texas State Board of Dental Examiners will be held on Friday, June 4, 1976, 9 a.m., in the Board Hearing Room, University of Texas Dental Branch, Texas Medical Center, Houston, to consider

adoption of or amendments to rules and regulations pertaining to dentists and all persons or businesses under the board's jurisdiction; to conduct a scheduled disciplinary hearing; and to conduct regular board business.

Additional information may be obtained from Carl C. Hardin, Jr., 718 Southwest Tower, 7th and Brazos, Austin, Texas 78701, telephone (512) 475-2443.

Filed: May 17, 1976, 10:23 a.m.

Doc. No. 762650

Meeting

A meeting of the Texas State Board of Dental Examiners will be held on Friday, June 18, 1976, 9 a.m., in the Board Hearing Room, University of Texas Dental Branch, Texas Medical Center, Houston, to consider adoption of or amendments to rules and regulations pertaining to dentists and all persons or businesses under the board's jurisdiction; to conduct a scheduled disciplinary hearing; and to conduct regular board business.

Additional information may be obtained from Carl C. Hardin, Jr., 718 Southwest Tower, 7th and Brazos, Austin, Texas 78701, telephone (512) 475-2443.

Filed: May 17, 1976, 10:23 a.m.

Doc. No. 762651

Joint Advisory Committee on Government Operations

Hearing

A hearing by the Natural Resources Subcommittee of the Joint Advisory Committee on Government Operations will be held on Wednesday and Thursday, May 26 and 27, 1976, 9 a.m., in Room 300, State Capitol, to consider the consolidation of state agency bond programs and natural resource agency programs.

Additional information may be obtained from Jean Williams, Room 911, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-7876.

Filed: May 14, 1976, 4:47 p.m.

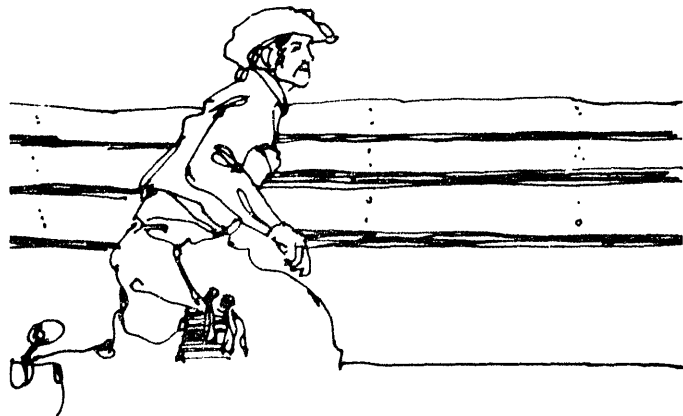
Doc. No. 762641-762642

Office of the Governor Emergency Addition to Agenda

An emergency addition was made to the agenda of a meeting of the Board of the Governor's Committee on Aging to be held on May 21, 1976, 10 a.m., in the Second Floor Conference Room, Southwest Tower, 211 East 7th Street, Austin. The addition includes consideration of the report on interagency agreements.

Additional information may be obtained from Vernon McDaniel, P.O. Box 12786, Austin, Texas 78711, telephone (512) 475-2717.

Filed: May 14, 1976, 10:48 a.m.
Doc. No. 762633



Texas Department of Health Resources

Emergency Meeting

An emergency meeting of the Hill Burton Committee of the Texas Department of Health Resources was held on Saturday, May 15, 1976, noon, at the Board Room, Department of Health Resources, 1100 West 49th Street, Austin, to consider proposed guidelines for the state board's use in considering the Hill-Burton Project application.

Additional information may be obtained from Raymond T. Moore, M.D., 1100 West 49th Street, Austin, Texas 78756, telephone (512) 454-3781.

Filed: May 14, 1976, 3:56 p.m.
Doc. No. 762638

Texas Parks and Wildlife Board for Lease

Meeting

A meeting of the Texas Parks and Wildlife Board for Lease will be held on Friday, May 21, 1976, in Room 831, 1700 North Congress, Austin, to consider an easement application.

Additional information may be obtained from H. E. White, 1700 North Congress, Austin, Texas 78701, telephone (512) 475-6491.

Filed: May 13, 1976, 4:46 p.m.
Doc. No. 762619

Texas State Board of Pharmacy

Meeting

A meeting of the Texas State Board of Pharmacy will be held on Tuesday, Wednesday, and Thursday, May 25-27, 1976, 8:30 a.m., at the University of Houston and Texas Southern University College of Pharmacy, Houston, to discuss reciprocity, written examinations, practical and oral examinations, and rehearing of a case involving Mack William West, Jr.

Additional information may be obtained from J. H. Arnette, Suite 916, 211 East 7th Street, Austin, Texas 78701, telephone (512) 478-9827.

Filed: May 13, 1976, 1:47 p.m.
Doc. No. 762607

Public Utility Commission of Texas

Hearing

A hearing by the Public Utility Commission of Texas will be held on Monday, June 14, 1976, 9:30 a.m., in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The hearing will concern applications for certificates of convenience and necessity by electric companies covering

the counties of Austin, Bastrop, Brazos, Burleson, Caldwell, Colorado, Fayette, Lavaca, Lee, and Washington. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Roy J. Henderson, Suite 450N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 475-7921.

Filed: May 14, 1976, 9:13 a.m.

Doc. No. 762621

Hearing

A hearing by the Public Utility Commission of Texas will be held on Monday, July 12, 1976, 9 a.m., in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The hearing will concern applications of telephone companies in the counties of Archer, Baylor, Callahan, Coke, Coleman, Fisher, Haskell, Irion, Jones, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Sterling, Taylor, Throckmorton, and Young. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Roy J. Henderson, Suite 450N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 475-7921.

Filed: May 14, 1976, 9:13 a.m.

Doc. No. 762622

Railroad Commission of Texas

Meeting

A meeting of the Transportation Division of the Railroad Commission of Texas will be held on Monday, May 24, 1976, 9 a.m., in the E. O. Thompson Building, 10th and Colorado Streets, Austin. The division will consider contested and uncontested public convenience and necessity applications; contested and uncontested rate applications; insurance and fee reinstatements; exempt commodity authority; I.C.C. authority; and miscellaneous items. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Meiling Newman, P.O. Box 12967, Capitol Station, Austin, Texas 78711, telephone (512) 475-3207.

Filed: May 14, 1976, 2:29 p.m.

Doc. No. 762635

Meeting

A meeting of the Oil and Gas Division of the Railroad Commission of Texas will be held on Tuesday, June 1, 1976, 9 a.m., at the E. O. Thompson Building, 10th and Colorado, Austin. The meeting concerns 10 hearing applications and 85 administrative applications. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from A. H. Barbeck, P.O. Drawer 12967, Capitol Station, Austin, Texas 78711, telephone (512) 475-3003.

Filed: May 14, 1976, 2:29 p.m.

Doc. No. 762636

School Land Board Emergency Addition to Agenda

An emergency addition was made to the agenda of a meeting of the School Land Board held on Tuesday, May 18, 1976, 10 a.m., in Room 831, 1700 North Congress, Austin, to include consideration of an application and permit for exploration for geothermal resources on state-owned lands.

Additional information may be obtained from H. E. White, 1700 North Congress, Austin, Texas 78701, telephone (512) 475-6491.

Filed: May 14, 1976, 4:58 p.m.

Doc. No. 762639

State Securities Board

Meeting

A meeting of the State Securities Board will be held on Friday, May 21, 1976, 1 p.m., in Room 709, LBJ Building, Austin. The board will discuss the minutes of the meeting of April 16, 1976; budget request for 1978-79 biennium; enforcement matters; current litigation; waiver requests; and withdrawals and denials since last board meeting. The board will discuss the attorney general's opinion requests in closed session.

Additional information may be obtained from Roy Mauer, Room 709, LBJ Building, Austin, Texas 78701, telephone (512) 475-4561.

Filed: May 14, 1976, 4:41 p.m.

Doc. No. 762640

Texas Water Quality Board

Meeting

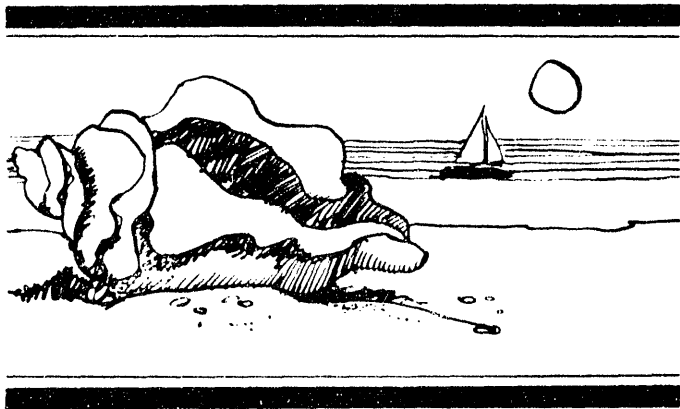
A meeting of the Texas Water Quality Board will be held on Thursday and Friday, May 27 and 28, 1976, 9 a.m. each day, Room 118, Stephen F. Austin Building, 1700 North Congress, Austin.

The board will discuss enforcement reports, temporary orders, construction grants, and miscellaneous items. Any items on the May 27, 1976, agenda not taken up due to lack of time will be carried over to the May 28, 1976, agenda. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Michael W. McKinney, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-6497.

Filed: May 17, 1976, 11:59 a.m.

Doc. No. 762652



Hearing

A hearing by the Hearings Division of the Texas Water Quality Board will be held on Monday, June 14, 1976, 10 a.m., at the Houston-Galveston Area Council Conference Room, 3701 West Alabama, Houston, to consider the application for an amendment to Permit 11539 by Gulf Coast Waste Disposal Authority (Harris County MUD No. 55), 910 Bay Area Boulevard, Houston, Texas 77058. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Phillip J. Paine, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-7845.

Filed: May 17, 1976, 11:59 a.m.

Doc. No. 762653

Hearing

A hearing by the Hearings Division of the Texas Water Quality Board will be held on Friday, June 18, 1976, 10 a.m., at the Council and Courts Building, Main and Freeman Streets, Duncanville, to consider the application for an amendment to Permit 39009 by Bio-Ecology Systems, Inc., 4100 East Jefferson Avenue, Grand Prairie, Texas 75050. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Larry Soward, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-7856.

Filed: May 17, 1976, 11:59 a.m.

Doc. No. 762654

Hearing

A hearing by the Hearings Division of the Texas Water Quality Board will be held on Tuesday, June 22, 1976, 1 p.m., in the District Courtroom, Freestone County Courthouse, Fairfield, to consider the application for a permit by Texas Utilities Generating Company, 2001 Bryan Tower, Dallas, Texas 75201. The complete notice is posted in the East Wing of the State Capitol.

Additional information may be obtained from Sam Jackson, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-6658.

Filed: May 17, 1976, 11:59 a.m.

Doc. No. 762655

Hearing

A hearing by the Hearings Division of the Texas Water Quality Board will be held on Wednesday, June 30, 1976, 10 a.m., at the Council Chamber, City Hall, 555 Walnut, Abilene, to consider the application for a permit by PAR Village, P.O. Box 197, De Leon, Texas 76444, and the City of Snyder, P.O. Drawer GG, Snyder, Texas 79549. The complete notice is posted in the East Wing of the State Capitol.

Additional information may be obtained from Larry Soward, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-7856.

Filed: May 17, 1976, 11:59 a.m.

Doc. No. 762656

Hearing

A hearing by the Hearings Division of the Texas Water Quality Board will be held on Wednesday, June 30, 1976, 10 a.m., at the Council Chamber, City Hall, 555 Walnut, Abilene, to consider the application for an amendment to Permit 00963 by West Texas Utilities Company (Paint Creek Power Plant), P.O. Box 841, Abilene, Texas 79604. The complete notice is posted in the East Wing of the State Capitol.

Additional information may be obtained from Larry Soward, P.O. Box 13246, Capitol Station, Austin, Texas 78711, telephone (512) 475-7856.

Filed: May 17, 1976, 11:59 a.m.
Doc. No. 762657

Texas Water Rights Commission

Meeting

A meeting of the Texas Water Rights Commission will be held on Monday, May 24, 1976, 10 a.m., at the Stephen F. Austin Building, 1700 North Congress, Austin, to consider water district matters such as approval of market study waiver, release from escrow and dissolution; setting hearing dates on the cancellation of Certified Filing 163 of the City of Lampasas; and on applications for temporary permits and applications for regular permits in various river basins; withdrawal of a temporary application by H. B. Zachry Company; contractual application by Community Water Supply Corporation and amendment to existing permit by E. J. Alderman; dismissal of water right claim by E. F. Barnes; and numerous water districts for failure to comply with audit reporting and filing requirements. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13207, Austin, Texas 78711, telephone (512) 475-4514.

Filed: May 13, 1976, 4:12 p.m.
Doc. No. 762618

Hearing

A hearing by the Texas Water Rights Commission will be held on Wednesday, June 16, 1976, 10 a.m., at the Stephen F. Austin Building, 1700 North Congress, Austin, to consider cancelation of Permit 2085, as amended, held by the City of Decatur. The complete docket is posted in the East Wing of the State Capitol.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13207, Austin, Texas 78711, telephone (512) 475-4514.

Filed: May 12, 1976, 3:19 p.m.
Doc. No. 762585

Meeting

A meeting of the Texas Water Rights Commission will be held on Wednesday, June 16, 1976, 10 a.m., at the Stephen F. Austin Building, 1700 North Congress, Austin, to consider Application CA-327 of Houston Lighting and Power Company for a permit based on a contract with the Lower Colorado River Authority with reference to the motion for rehearing.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13207, Capitol Station, Austin, Texas 78711, telephone (512) 475-4514.

Filed: May 17, 1976, 8:30 a.m.
Doc. No. 762648

Hearing

A hearing by the Texas Water Rights Commission will be held on Tuesday, July 13, 1976, 10 a.m., at the Stephen F. Austin Building, 1700 North Congress, Austin, to discuss the matter of the Cities of Farmers Branch and Grand Prairie vs. the City of Dallas water rate complaint. The commission will consider oral arguments by the parties and consideration of the examiner's proposal for decision and the exceptions filed.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13207, Capitol Station, Austin, Texas 78711, telephone (512) 475-4514.

Filed: May 17, 1976, 8:31 a.m.
Doc. No. 762649

Quasi-State Agencies

Meetings Filed May 13, 1976

The Regional Transportation Policy Advisory Committee, Steering Committee, will meet at Dallas/Fort Worth Airport Administration Building Board Room, on May 25, 1976, at 9 a.m. Further information may be obtained from Cinde Weatherby, P.O. Drawer COG, Arlington, Texas 76011, telephone (817) 461-3300, extension 180.

The Middle Rio Grande Development Council, Human Resources Committee, will meet at the Public Library, Main Street, Eagle Pass, on May 26, 1976, at 1 p.m. Further information may be obtained from Saul Dovalina, Box 1461, Del Rio, Texas, telephone (512) 775-1581.

The Deep East Texas Council of Governments, Inter-Agency Council, met at the Fair Acres Community Center, Diboll, on May 20, 1976, at 2 p.m. Further information may be obtained from Mary Bodley, 210 Lufkin Avenue, Lufkin, Texas 75901, telephone (713) 632-4016.

The Lower Neches Valley Authority, Board of Directors, met in the Conference Room, LNVA Office Building, 7850 Eastex Freeway, Beaumont, on May 18, 1976, at 10:30 a.m. Further information may be obtained from J. D. Nixon, P.O. Box 3007, Beaumont, Texas 77704, telephone (713) 892-4011.

The Central Texas MH/MR Center, Board of Trustees, met at 400 Lakeway Drive, Brownwood, on May 18, 1976, at noon. Further information may be obtained from James H. Dudley, P.O. Box 250, Brownwood, Texas 76801, telephone (915) 646-9574.

The Lower Colorado River Authority, met at 3700 Lake Austin Boulevard, Austin, on May 20, 1976, at 9 a.m. Further information may be obtained from Charles Herring, P.O. Box 220, Austin, Texas 78767, telephone (512) 474-5931.

Doc. No. 762590

Meetings Filed May 14, 1976

The High Plains Underground Water Conservation District 1, Board of Directors, will meet at 2930 Avenue Q, Lubbock, on May 26, 1976, at 10 a.m. Further information may be obtained from Frank A. Rayner, 2930 Avenue Q, Lubbock, Texas 79401, telephone (806) 762-0181.

The Education Service Center Region IX, Board of Directors, met in the Board Room, 3014 Old Seymour Road, Wichita Falls, on May 20, 1976, at 9 a.m. Further information may be obtained from Dr. H. M. Fullerton, 3014 Old Seymour Road, Wichita Falls, Texas 76309, telephone (817) 322-6928.

The South Plains Health Systems, Inc., Board of Directors, met in the Community Room of the George and Helen Mahon Library, Lubbock, on May 20, 1976, at 7 p.m. Further information may be obtained from John H. Selby, 1217 Avenue K, Lubbock, Texas 79401, telephone (806) 747-0181.

The Nortex Regional Planning Commission, Executive Committee, met at Mitchell's Restaurant, Seymour, on May 20, 1976, at 7 p.m. Further information may be obtained from Edwin B. Daniel, 1914 Kemp Boulevard, Wichita Falls, Texas 76309, telephone (817) 322-5281.

Doc. No. 762634

Meetings Filed May 17, 1976

The Capital Area Planning Council, Executive Committee, will meet at 611 South Congress, Austin, on May 25, 1976, at 2 p.m. Further information may be obtained from Richard G. Bean, 611 South Congress, Austin, Texas 78704, telephone (512) 443-7653.

Doc. No. 762658

Texas Education Agency

Notice of Correction

The proposed amendment to Rule 226.41.15.010 concerning basic financial support for regional education services, which appeared in the *Texas Register*, Volume I, Number 34, April 30, 1976, page 1117, should read as follows:

.010. *Basic Financial Support for Regional Education Services.* Payment is made from the Foundation School Program Fund to each regional education service center on the basis of a formula developed by the Commissioner of Education and approved by the State Board of Education.

The formula for allocating funds for the basic financial support of regional education services shall be \$125,000 for each regional education service center plus

$$\left[\frac{(\$3.00 \times \text{SADA}) - \$2,500,000}{\text{SADA}} \right] \times \text{RADA}$$

where SADA = State Average Daily Attendance

RADA = Average Daily Attendance in the Service Center Region.

Employees Retirement System of Texas

Retirement Booklet

The Employees Retirement System of Texas has received initial shipments of the 1976 retirement booklet "Benefits-- For You-- For Your Family." The purpose of this publication is to present an easily understandable description of the retirement benefits available to career Texas state employees. All charts and tables have been revised. A new feature of suggested form letters to the Employees Retirement System is included. These suggested letters show what information is needed by the system in order to respond to certain requests. Booklets are now being distributed to the various state agencies.

Issued in Austin, Texas, on May 13, 1976.

Doc. No. 782647 Everett L. Anschutz
Executive Secretary
Employees Retirement System
of Texas

Filed: May 17, 1976, 7:55 a.m.

For further information, please call (512) 476-6431.

Texas Judicial Council

Summary of Results of a Study on Capital Murder Cases in Texas Courts

The Texas Judicial Council released the results of a study on capital murder cases in Texas courts. It showed that since the new death penalty statutes went into effect on June 14, 1973, 74 persons have been taken to trial in cases in which the death penalty was sought. Of those 74, 42 received the death penalty and currently are on or destined for death row, subject to appellate court review. Of the remaining 32, 18 received life imprisonment, six defendants were convicted of lesser included offenses; there were five mistrials because of hung juries, and three defendants were found not guilty.

The 18-member Texas Judicial Council is a state agency created to conduct a continuous study of the judicial system of the state. Thomas M. Reavley, Associate Justice of the Texas Supreme Court, is president of the council.

Texas' old death penalty statute was held to be unconstitutional by the U.S. Supreme Court in 1972 in the case of *Furman v. Georgia*. The opinion appeared to suggest that a statute carefully drafted to prevent the past "arbitrariness" of the sentencing authority resulting in the death penalty being so ". . . wantonly and freakishly imposed," could possibly pass constitutional muster. The Texas Legislature in 1973 enacted the current capital murder statutes in an attempt to meet the constitutional requirements as announced by the U.S. Supreme Court. Under the provisions of this new statute, only murder committed under specified circumstances is punishable by death, and then only after a unanimous jury finding in three specific issues concerning the accused's conduct.

The Texas Court of Criminal Appeals upheld the constitutionality of this new death penalty statute in the 1975 decision of *Jurek v. State*.

Sentences. In the 60 cases which resulted in convictions of capital murder, two special issues were submitted to the jury. These issues were (1) whether the defendant's conduct had been deliberate and with the expectation that the death of the deceased or another would result, and (2) whether there was a probability that the defendant would commit violent acts in the future. Both issues (1) and (2) were answered in the negative in three cases. In 12 cases only the second issue was answered in the negative. In three cases, the defendant

agreed to a life sentence following a conviction of capital murder by a jury. This accounts for the 18 life sentences. A third special issue, whether the defendant's action in killing the deceased had been unreasonable in response to provocation by the deceased, was submitted in a total of 27 cases. The juries decided that the defendant had acted unreasonably in every case.

Offense Charged. The most common offense charged under the capital murder statute was murder during the commission of a robbery. This category accounted for 26 of the 42 death sentences and 15 of the 18 life imprisonment sentences. Cases involving the murder of a peace officer or firefighter resulted in six death and two life sentences. Of the 52 cases in which capital murder during a robbery was charged, the responses indicate that at least 28 of these involved commercial establishments of which at least nine were convenience food stores. The deaths of six city police officers, three state highway patrol officers, one deputy sheriff, and one firefighter were involved in the 10 cases in which capital murder of a peace officer or firefighter was charged.

Representation of Defendants. Defendants charged with capital murder were represented by court-appointed attorneys in 42 cases and by attorneys retained by the defendant or his family in 31 cases. The rate for conviction for capital murder of defendants represented by court-appointed attorneys was 93 percent (39 convictions out of 42 cases), while the corresponding rate for those represented by retained counsel was 65 percent (20 convictions out of 31 cases). Once convicted of capital murder, the defendants represented by the court-appointed attorneys received the death sentence in 79 percent of the cases (31 out of 39) while defendants represented by retained counsel received the death sentence in 55 percent of the cases (11 out of 20).

Race/Ethnic Background of Defendants. During the period covered by this report, there were 33 white, 30 black, and 11 Spanish-surnamed defendants brought to trial before a jury on the charge of capital murder. Of the 33 white defendants brought to trial, 19 received the death penalty, seven received life imprisonment, and seven were not convicted. Of the 30 black defendants, 16 received the death penalty, 10 received life imprisonment, and four were not convicted. Of the 11 Spanish-surnamed defendants, seven received the death penalty, one received life imprisonment, and three were not convicted.

Race/Ethnic Background of Victims. Only nine of the 74 cases involved non-white victims. The death penalty was assessed in one of the six cases involving black victims and in all three cases involving victims with Spanish-surnames.

Race/Ethnic Background of Jurors. The juries of the 74 cases included 26 which were all white in composition, 16 which contained a mixture of white and Spanish-surnamed jurors, 11 composed of white and black jurors, six composed of representatives of all three groups, while this type of information in the 15 remaining cases was unavailable.

Based on the available data, of the 16 black defendants sentenced to death, nine cases had all white juries while four cases had blacks on the jury. Of the seven defendants with Spanish-surnames sentenced to death, two of the juries included jurors with Spanish surnames while one jury was all white. All white juries returned the death sentence in 68 percent of the cases that they heard (15 out of 26) while non-all white juries returned the death sentence in 55 percent of the cases (18 out of 33).

Issued in Austin, Texas, on May 13, 1976.

Doc. No. 762623 C. Raymond Justice
Chief Counsel
Texas Judicial Council

Filed: May 14, 1976, 9:50 a.m.

For further information, please call (512) 475-2421.

Texas Water Quality Board

1976 Board Meeting Schedule

May 27, 28, 1976, 9 a.m., Room 118, Stephen F. Austin Building, Austin

June 24, 25, 1976, 9 a.m., Room 105, John H. Reagan Building, Austin

July 29, 30, 1976, 9 a.m., Room 118, Stephen F. Austin Building

August 25, 26, 1976, 9 a.m., Room 118, Stephen F. Austin Building (previously scheduled for August 26, 27, 1976)

September 23, 24, 1976, 9 a.m., Room 118, Stephen F. Austin Building

October 28, 29, 1976, 9 a.m., Room 118, Stephen F. Austin Building

November 18, 19, 1976, 9 a.m., Room 118, Stephen F. Austin Building

December 16, 17, 1976, 9 a.m., Room 118, Stephen F. Austin Building

Publication Schedule for the Texas Register, June-August

Listed below are the deadline dates for issues of the *Texas Register* published through August. Because of our printing schedule, material received after the deadlines for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Friday of the preceding week and Monday of the week of publication. Please note that no issue will be published on June 4, and that the issue published on July 27 will be a cumulative index-- no other material will be published in that issue.

FOR ISSUE PUBLISHED ON:	ALL COPY EXCEPT NOTICES OF MEETINGS BY NOON ON:	ALL NOTICES OF MEETINGS BY NOON ON:
Tuesday, June 1	Wednesday, May 26	Thursday, May 27
Friday, June 4	NO ISSUE PUBLISHED	
Tuesday, June 8	Wednesday, June 2	Thursday, June 3
Friday, June 11	Friday, June 4	Monday, June 7
Tuesday, June 15	Wednesday, June 9	Thursday, June 10
Friday, June 18	Friday, June 11	Monday, June 14
Tuesday, June 22	Wednesday, June 16	Thursday, June 17
Friday, June 25	Friday, June 18	Monday, June 21
Tuesday, June 29	Wednesday, June 23,	Thursday, June 24
Friday, July 2	Friday, June 25	Monday, June 28
Tuesday, July 6	Wednesday, June 30	Thursday, July 1
Friday, July 9	Friday, July 2	Monday, July 5
Tuesday, July 13	Wednesday, July 7	Thursday, July 8
Friday, July 16	Friday, July 9	Monday, July 12
Tuesday, July 20	Wednesday, July 14	Thursday, July 15
Friday, July 23	Friday, July 16	Monday, July 19
Tuesday, July 27	CUMULATIVE INDEX	
Friday, July 30	Friday, July 23	Monday, July 26
Tuesday, August 3	Wednesday, July 28	Thursday, July 29
Friday, August 6	Friday, July 30	Monday, August 2
Tuesday, August 10	Wednesday, August 4	Thursday, August 5
Friday, August 13	Friday, August 6	Monday, August 9
Tuesday, August 17	Wednesday, August 11	Thursday, August 12
Friday, August 20	Friday, August 13	Monday, August 16
Tuesday, August 24	Wednesday, August 18	Thursday, August 19
Friday, August 27	Friday, August 20	Monday, August 23
Tuesday, August 31	Wednesday, August 25	Thursday, August 26