

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (the finance commission) proposes amendments to §9.1, concerning Application, Construction, and Definitions; and §9.12, concerning Default in 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings.

The purpose of the proposed amendment to §9.1 is to clarify the authority of the Texas Department of Banking (DOB) to employ a hearings officer.

The purpose of the proposed amendments to §9.12 is to clarify the procedures used by the finance agencies to dispose of a contested case in the event of default. The finance agencies are the DOB, the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). The amendments are necessary to ensure 9.12 conforms to the State Office of Administrative Hearings (SOAH) procedural default rule (1 TAC §155.501), which was updated November 20, 2020.

The proposed amendment to §9.1 adds a reference to Texas Finance Code, §11.202 which provides the statutory authority for the DOB to employ a hearings officer to serve the finance agencies. The effect is to ensure the public is aware of the source of this authority.

The proposed amendments to §9.12 consist of minor technical corrections ensuring that the language is consistent with SOAH's default rule found in 1 TAC §155.501. Section 9.12 governs default proceedings for contested case hearings involving the finance agencies. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH, specifically referencing default proceedings conducted pursuant to 1 TAC §155.501. The proposed amendments to §9.12 are a result of substantive updates to §155.501 by SOAH in 2020, with the effect of ensuring the finance agencies' procedural rule remains consistent.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will

be that the finance commission's rules will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro- businesses or rural communities. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

For each year of the first five years that the amended rules will be in effect, the amended rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

SUBCHAPTER A. GENERAL

7 TAC §9.1

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt

rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the proposal are contained in Texas Finance Code: Chapters 11, 14, 152, 154, 156-159, 180, 393, 394; Title 3, Subtitles A-C; Title 4; Texas Health and Safety Code, Chapter 712; and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions.

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency under Texas Finance Code, §11.202. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code and §9.12(b) of this title (relating to Default).

(b) - (c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402742

Robert K. Nichols

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.12

The amendments are proposed under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also proposed under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301, §31.003(a)(5), and 181.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §152.052(a) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 152. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or savings banks. Texas Finance Code, §66.002(3) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Texas Finance Code, Title 3, Subtitle B. Texas Finance Code, §96.002(a)(2) authorizes the finance commission to adopt procedural rules for processing, hearing, and deciding applications filed with the savings and mortgage lending commissioner or SML under Finance Code, Title 3, Subtitle C. Texas Finance Code, §11.306 authorizes the finance commission to adopt residential mortgage loan origination rules as provided by Texas Finance Code, Chapter 156; and, Texas Finance Code, §156.102(a) authorizes the finance commission to adopt rules to enforce such chapter. Texas Finance Code, §157.0023 authorizes the finance commission to adopt rules to enforce Chapter 157. Texas Finance Code, §158.003(b) authorizes the finance commission to adopt rules to enforce Chapter 158. Texas Finance Code, §159.108 authorizes the finance commission to adopt rules to enforce Chapter 159. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14, and Title 4. Texas Finance Code, §393.622 authorizes the finance commission to adopt rules to enforce Chapter 393. Texas Finance Code, §394.214 authorizes the finance commission to adopt rules to enforce Chapter 394. Texas Occupations Code, §1956.0611 authorizes the finance commission to adopt rules to enforce Subchapter B, Chapter 1956.

§9.12. Default.

(a) (No change.)

(b) SOAH hearings. In a hearing conducted by the State Office of Administrative Hearings (SOAH), the agency may request that the administrative law judge make a finding of default under 1 TAC §155.501 (relating to Failure to Attend Hearings and Default Proceedings).

(1) Service of notice of hearing. A notice of hearing may be served to the party's last known address. Applicants and holders of

licenses, registrations, charters, and permits shall keep the agency informed as to their correct current mailing addresses and may be served with initial process by registered or certified mail, return receipt requested, to the address provided to the agency.

(2) Adequate proof of notice of hearing. At the time of the request, the agency must present adequate proof to the administrative law judge that the agency properly served the party with the notice of hearing, as required by 1 TAC §155.501(b).

(3) Effect of default. If the administrative law judge receives the required showing of proof to support a default, the allegations contained in the notice of hearing may be deemed admitted, and the relief sought in the notice may be granted with respect to any party given proper notice of the hearing.

(4) Disposing of default case. The agency may request that the administrative law judge dismiss the case from the SOAH docket and remand it to the agency for informal disposition as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(5) Final order after default. If the administrative law judge issues an [a conditional] order of default dismissal [and remand] that provides the defaulting party with adequate notice and opportunity to set aside the default under 1 TAC §155.501(e) and the case is remanded to the agency, [conditional order of dismissal and remand has become final,] the agency may issue a final order that:

(A) finds that the agency served the party with a notice of hearing stating that if the party failed to attend the hearing, then the allegations contained in the notice of hearing could be deemed admitted, and the relief sought might be granted;

(B) describes how the notice of hearing was served on the party;

(C) finds that the party failed to attend the hearing;

(D) finds that the allegations described in the notice are deemed admitted;

(E) concludes that the party has defaulted as a matter of law; and

(F) grants the relief described in the notice of hearing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402743

Robert K. Nichols

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



CHAPTER 10. CONTRACT PROCEDURES SUBCHAPTER C. CONTRACT MONITORING

7 TAC §10.40

The Finance Commission of Texas (the commission) proposes to amend 7 Texas Administrative Code §10.40 (§10.40), concerning enhanced contract and performance monitoring, and the posting of certain contracts on commission supervised finance agency websites. The proposed amendments would remove a

redundant provision of the current rule and ensure §10.40 conforms with Texas Government Code, §2261.253.

Adopted in 2017, §10.40 contains the finance agencies' (defined below) procedures concerning contracting for the purchase of goods or services from private vendors. The finance agencies are the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (the finance agencies).

Subsection (b)(2) currently limits application of §10.40 to contracts for which requests for bids or proposals were made public on or after September 1, 2015, and contracts exempt from competitive bidding entered into on or after September 1, 2015. Subsection (b)(2) is no longer necessary because the finance agencies no longer have any outstanding contracts for which requests were made before September 1, 2015. The proposed amendments thus remove the now superfluous subsection.

Subsection (b)(3) currently identifies certain documents that are not subject to §10.40, consistent with Texas Government Code, §2261.253(d). A proposed amendment to the heading of subsection (b)(2) would specify that the documents are not subject to "this section," replacing current text referring only to "enhanced monitoring." Other proposed amendments would specify that documents not subject to §10.40 "include" the four documents listed in subsection (b)(2). This is intended to clarify that the list in subsection (b)(2) is not an exhaustive list, and other documents might not be subject to the rule (e.g., documents excluded under another provision of Texas Government Code, §2261.253).

Texas Government Code, §2261.253(c) requires state agencies to "by rule [...] establish a procedure to identify each contract that requires enhanced contract or performance monitoring." While each finance agency has prescribed and implemented a procedure for identifying those contracts for enhanced monitoring, the proposed amendments add a new paragraph to subsection (c), ensuring full compliance with §2261.253(c).

Subsection (d) currently describes website posting of contracts. A proposed amendment to subsection (d)(1) replaces a specific reference to Texas Government Code, §2261.253(a) with a more general reference to posting in compliance with Texas Government Code, §2261.253. This is intended to clarify that the agencies will comply with respect to contracts that meet the requirements of §2261.253 as a whole.

Wendy Rodriguez, Deputy Commissioner, Texas Department of Banking, on behalf of the Finance Commission of Texas, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Deputy Commissioner Rodriguez has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules are more easily understood by licensees subject to the rules, and are more easily enforced by the finance agencies.

There is no anticipated cost to persons who are required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities. There will be no effect on individuals required to comply with the amendments as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

To be considered, comments on the proposed amendment to §10.40 must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Texas Government Code, §2261.253(c), which requires each state agency to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The statutory provisions affected by the proposed new rule are contained in Texas Government Code, Chapter 2261.

§10.40. *Enhanced Contract and Performance Monitoring; Website Posting.*

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

(1) Finance agencies. This section applies to the agencies governed by the Finance Commission of the State of Texas: the Texas Department of Banking, the Texas Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner.

~~[(2) Date of contracts subject to enhanced monitoring. This section applies to the following:]~~

~~[(A) contracts for which the request for bids or proposal is made public on or after September 1, 2015; and]~~

~~[(B) for contracts exempt from competitive bidding, contracts entered into on or after September 1, 2015.]~~

~~(2) [(3)] Documents not subject to this section. Documents not subject to this section include the following: [enhanced monitoring. This section does not apply to:]~~

- (A) memoranda of understanding;
- (B) interagency contracts;
- (C) interlocal agreements; and [or]
- (D) contracts that do not involve a cost.

- (c) Contract evaluation and monitoring.

(1) Use of finance agency policies and contract management handbook. Contracts are evaluated and monitored in accordance with each respective finance agency's policies and contract management handbook. Each finance agency maintains a contract

management handbook in accordance with Texas Government Code, §2261.256.

(2) Identifying contracts that require enhanced monitoring. Each finance agency will include risk assessment factors in its contract management handbook to identify contracts that require enhanced contract or performance monitoring. The risk assessment factors must include the following:

- (A) the total contract amount;
- (B) the type of contract purchase;
- (C) the impact to the agency and its mission; and
- (D) the compliance history of the contractor.

(3) [(2)] Finance Commission notice. If a finance agency identifies a contract that requires enhanced monitoring, the finance agency will notify the Finance Commission in accordance with its policies and contract management handbook. The finance agency will include in the notification any serious issues or risks identified with the contract.

- (d) Website posting.

(1) Posting on finance agency website. Each finance agency will post on its website contracts that meet the posting requirements provided by Texas Government Code, §2261.253 [§2261.253(a)].

(2) Redaction of confidential information. Before posting the contracts under paragraph (1) of this subsection, each finance agency must redact information that is confidential by law, information excepted from public disclosure by the Texas Public Information Act (Texas Government Code, Chapter 552), and the social security number of any individual in accordance with Texas Government Code, §2261.253(e).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402744

Robert K. Nichols

General Counsel

Finance Commission of Texas

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.27

The Finance Commission of Texas (the "commission"), on behalf of the Texas Department of Banking (the "department"), proposes to amend 7 Texas Administrative Code §33.27 ("§33.27"), concerning fees to obtain and maintain a license.

The proposed amendments to §33.27 will: (i) update the assessment fee schedules in subsections (e)(1) and (e)(2) to reflect the assessments set forth in the attached Figure: 7 TAC

§33.27(e)(1) and Figure: 7 TAC §33.27(e)(2), respectively; (ii) add subsection (e)(4) permitting the department to increase assessments based on the percentage change in an inflation index beginning September 1, 2025; and (iii) increase the hourly examination fees in subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4) to \$120 per hour.

Annual Assessments

The primary regulatory programs administered by the department are supported by assessments, like those in §§33.27(e)(1) and (e)(2), requiring each regulated industry to pay its proportionate share of the cost of regulation. The purpose of most fees charged by the department, whether for an application, an examination, or another purpose, is to enable the department to be self-supporting and each regulatory program to be self-sustaining. Further, the department may not directly or indirectly cause the State's General Revenue Fund to incur such costs. Therefore, the department must periodically evaluate its operations and financial forecasts to determine whether the fee structure equitably funds the cost of regulation, as required by statute, and adequately supports the department and relevant regulatory programs.

The department determined that key regulatory functions are not adequately funded by the existing fee structure, primarily due to increase in labor and other costs. The proposed amendments to §33.27 will increase the allowable annual assessments paid by money services businesses to offset forecasted funding shortfalls. These adjustments are long overdue, as operational expenses have significantly increased while assessments for money services businesses have not increased in over nine years. See *Texas Register*, Vol. 39, No. 35, August 29, 2014, p. 6827.

As discussed in the Fiscal and Regulatory Section below, penalties assessed to both licensed and unlicensed money services businesses during the fiscal year may be used to offset the assessments collected by the department. However, forecasting of assessments is calculated independently of any penalties as penalties are inherently inconsistent from year to year and the department seeks to ensure projected budgets are based on reliable sources of revenue instead of enforcement actions.

Increases in operational costs are principally responsible for driving the proposed fee increases. The department's costs for money services business programs, such as the required periodic examination of each licensed business, have increased over the years due to a variety of factors including the following: rising inflation impacting items such as travel costs; the necessity to attract, hire, and retain qualified personnel; and the additional time, resources, and attention required by the increasing complexity of money services business operations. As a result, the staffing plan for full-time money services business financial examiners has increased from six in fiscal year 2021 to 12 in fiscal year 2023. Fiscal year 2024's staffing plan further increases the number of examiners to 15 in order to properly, and timely, examine license holders and anticipated new license holders as projected from current applications.

The department is also incurring new costs related to the passage of Chapter 160 of the Finance Code ("Chapter 160"), which became effective September 1, 2023. Chapter 160 charges the department with ensuring money transmitters that qualify as digital asset service providers comply with certain standards. The build out of an expanded regulatory scheme to administer the new Chapter 160, which includes an expanded examination

scope for the eligible digital asset service providers, generate costs to the department which have not been previously incurred.

Based on historical examination data and costs, coupled with the increased complexity of the examinations, the department believes the proposed fee adjustments will provide the funding required to administer and enforce Finance Code, Chapters 152 and 160 in a manner that is fair and equitable to licensees.

Inflation Adjustments

The addition of §33.27(e)(4) will eliminate the need for large future, one-time increases in annual assessments by allowing the department to increase those assessments proportionate to inflation. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (the "GDPIPD"), published quarterly by the Bureau of Economic Analysis, which is part of the United States Department of Commerce. The GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level. The GDPIPD is used for similar purposes in Title 7, Texas Administrative Code Chapters 3, 25, and 26.

Examination Fees

This rule amendment also proposes an increase in the rate of each examiner hour to \$120, specifically in §33.27 subsections (d)(1)(A), (e)(3), (f)(1), (g)(3), (h)(2), and (h)(4). These hourly fees are charged to money services businesses in the following limited instances: the examination of a new money services business that has not yet filed the first annual report and thus not paid an annual assessment; review of a change of control application that requires more than eight employee hours; an additional examination required in the same fiscal year due to a money services business's failure to comply with Finance Code, Chapter 152 ("Chapter 152"); on-site review of money services business' authorized delegates; and an on-site examination of an applicant, as deemed necessary.

To determine the proposed rate, the department compiled the salaries of all money services business examiners (based on fully staffed projections) and related direct and indirect expenses, including overhead, and divided by available billable hours (excluding vacation leave, sick leave, and holidays).

Fiscal and Regulatory Impact

Jesus "Jesse" Saucillo Director of Non-Depository Supervision, Texas Department of Banking, has determined that the public benefit anticipated as a result of adopting the rule amendment, for each year of the first five years the proposed amended rule is in effect, will enhance consumer protection and provide assurance that the department can continue to meet its regulatory mandate under Finance Code, Chapters 152 and 160.

For each year of the first five years that the amended rule will be in effect, the rule is not expected to:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and

- positively or adversely affect this state's economy.

Director Saucillo also determined that for the first five-year period it is in effect, the amended rule will require an increase in fees paid to the department and that there will be fiscal implications for state government (but not for local government). The amended rule itself is an increase in fees charged to applicable businesses, generating additional revenues to the department, with additional increases contemplated by the inflation adjustments proposed in subsection (e)(4).

Director Saucillo conservatively estimates that the proposed assessment fee adjustments will generate an average increase of \$1,068,115 in revenue for each year of the first five-year period the proposed rule is in effect, to cover projected expenses. The projected increases in revenue are not based on the maximum amounts allowed under the amended rule, rather it is an average of the increase in revenue to cover the division's forecasted increases in expenses. The department monitors actual expenses on a quarterly basis to balance revenues with expenses and allow for the reduction of charged assessments if revenues sufficiently exceed expenses in a fiscal year.

Expenses were determined using established knowledge-based forecasts and past, current, and projected financial information. The major expenses included in the analysis were salaries, in-state examination travel expenses, and employee training and development fees. For salaries, anticipated promotions and the hiring of additional staff and related costs were included in the projected expenses. A three percent year-over-year inflationary increase was included when calculating the five-year average increase in expense. However, these increases may be offset to some extent by fines and penalties collected by the department during the fiscal year. In those circumstances, the commissioner may reduce payable assessments pursuant to §33.27, as discussed further below.

For each year of the first five years during which the amended section will be in effect, there will be economic costs applicable to persons who are required to comply with the amended section, as proposed. There will be an adverse economic effect on small businesses and micro-businesses due to the increases in fees, though these effects are mitigated as there will be smaller proportionate increases for small and micro-businesses, and there will be no adverse economic effect on rural communities, as described further in the following paragraphs.

There are 184 money services business licensees paying assessment fees this fiscal year. Of these licensees, the department has identified seven as small businesses, 19 as micro-businesses, and zero in rural communities, each as defined in Government Code, §2006.001.

A money service business may obtain one of two licenses under Chapter 152: a license for money transmission, or a license for currency exchange. The department currently has 22 currency exchange licensees of which three were identified as small businesses, and 19 as micro-businesses. Since examining a currency exchange licensee is substantially less complex than examining a money transmission licensee, the proposed increase in assessments for a currency exchange licensee is substantially less than the proposed increase for a money transmission licensee. The average increase in assessments for currency exchange licensee will be 14%, or \$734.

Each of the four money transmission licensees identified as a small business will, on average, pay 14% or \$1,126 more in fees for each year of the first five years the proposed rule is in effect.

No money transmission licensees were identified as micro-businesses.

The assessment table is a tiered system segregated into eight categories based on Texas transaction volume. The average increase in fees for money transmitters is based on the volume of money transmission activity conducted in Texas and summarized as follows:

- 15% or \$1,012 for annual money transmission volume of less than \$200 million;
- 22% or \$2,963 for annual money transmission volume of greater than or equal to \$200 million but less than \$1 billion;
- 50% or \$10,548 for annual money transmission volume of greater than or equal to \$1 billion but less than \$2 billion; and
- 158% or \$33,496 for annual money transmission volume of greater than or equal to \$2 billion.

The department believes this proposed assessment fee structure best satisfies the mandate of Finance Code §152.052(b) which provides that fees be proportionate and equitable and provide for recovery of the department's costs related to administering and enforcing the Chapters 152 and 160.

The two largest percentage increases for money transmitters will affect approximately 40 licensees conducting greater than or equal to \$1 billion in annual transmission. Currently, assessments are capped at \$21,250 and those money transmitters conducting more than \$1.1 billion in annual money transmission volume are eligible to be assessed this maximum assessment cap. However, this maximum assessment is not sufficient to cover the increased and forecasted, direct and indirect costs required to administer and regulate these large and complex money services businesses.

Of the 40 licensees discussed in the paragraph above, 24 money transmitter licensees conduct more than \$2 billion in annual money transmission volume. These licensees account for over 89% of total transmission volume of all money transmission licensees in this state. With this significant volume comes a disproportionate regulatory burden compared to the average money transmitter licensee. Increasing the maximum assessment amount reflects an appropriate allocation of costs to those money transmitter licensees conducting the largest amount of money transmission volume in this state. Based on current licensee data, the department expects 15 licensees will be subject to the proposed increased maximum assessment.

The department has adopted and continues to apply strategies to mitigate adverse economic impacts on affected entities. Assessments are collected on a quarterly basis, preventing money services businesses from incurring a one-time financial load. Additionally, while the average increase in annual assessments for currency exchange licensees is significantly lower than money transmitter licensees, 7 Texas Administrative Code §33.27(j) provides an option for which a currency exchange licensee can obtain a temporary reduction in its assessment for one year if it is experiencing financial difficulties. Money services businesses must still demonstrate the financial condition and responsibility to protect the interests of purchasers of money services and the public.

As provided by 7 Texas Administrative Code §33.27(i)(3), the department may reduce assessments otherwise due in a year when a lesser amount is necessary to fund the department's cost of operations. In fiscal years 2019, 2020, 2021, 2022, and 2023, the

department reduced total billable annual assessments by 38%, 33%, 26%, 29%, and 22%, respectively. This was largely a result of the above referenced unbudgeted penalties collected by the department for unlicensed money services business activity and non-compliance by licensed money services businesses, as well as staff vacancies. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

Comments

The department is requesting comments from any interested party to be provided to the department. To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on August 5, 2024. Comments must be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Proposed Amendments

The amendments to §33.27 are proposed under Finance Code, §§152.052 and 160.006, which authorize the commission to adopt rules to administer and enforce Texas Finance Code, Chapter 152, and Chapter 160, respectively. The commission may by rule impose and collect proportionate and equitable fees and costs for notices, applications, examinations, investigations, and other actions required to recover the cost of maintaining and operating the department, administering, and enforcing Chapter 152 and other applicable law, and achieve the purposes of Chapter 152 and Chapter 160. Chapter 152 was enacted by Senate Bill 895 and Chapter 160 was enacted by House Bill 1666 during the 88th Legislative Session.

Texas Finance Code §§152.107 and 160.005 are affected by the proposed amended sections.

§33.27. *What Fees Must I Pay to Get and Maintain a License?*

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

(d) What fees must I pay to obtain a new license?

(1) You must pay a \$10,000 application fee to obtain a new money transmission license or a \$5,000 application fee to obtain a currency exchange license. If your application is accepted for processing pursuant to Finance Code, §152.106, your application fee will be non-refundable. You may also be required to pay the following additional fees:

(A) If the commissioner determines that it is necessary to conduct an on-site investigation of your business, you must pay a non-refundable investigation fee at a rate of \$120 [\$75] per hour for each department examiner required to conduct the investigation and all associated travel expenses;

(B) If the commissioner determines that it is necessary to employ a third-party screening service to assist with the investigation of your license application, you must pay the department for the reasonable costs for the third-party investigation; and

(C) If the commissioner determines it is necessary to perform background checks using fingerprint identification records, you must either submit payment for the costs of this service at the time you file your application or pay the department upon request.

(2) The commissioner may reduce the fees required under paragraph (1) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and/or [and or] currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §152.107(d)(2).

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(1)

[Figure: 7 TAC §33.27(e)(1)]

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:

Figure: 7 TAC §33.27(e)(2)

[Figure: 7 TAC §33.27(e)(2)]

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §152.107(d)(2), you must pay an examination fee of \$120 [\$75] per hour for each examiner and all associated travel expenses for an examination.

(4) Adjustments for inflation. In this section, "GDPIPD" means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The "annual GDPIPD factor" is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(A) Beginning September 1, 2025, and each September 1 thereafter, the tables in paragraphs (1) and (2) of this subsection, as most recently revised before such date pursuant to this subsection, may be revised by the commissioner as follows:

(i) the base assessment amount, listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars;

(ii) each factor listed in column three of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to the number of decimal places set forth in the applicable row; and

(iii) the maximum assessment amount, listed in column three, row eight of each table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars.

(B) If the table in paragraphs (1) and (2) of this subsection are revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare revised tables reflecting the inflation-adjusted values to be applied effective the following September 1, and will provide each license holder with notice of and access to the revised table.

(f) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 152, as authorized under §152.056, you or the investigated person must pay the department an investigation fee calculated at a rate of \$120 [\$75.00] per employee hour for the investigation and all associated travel expenses.

(2) If the commissioner determines that it is necessary to employ a third-party screening service to assist with an investigation, you must pay the department for the costs incurred for the third-party investigation.

(3) If the commissioner determines it is necessary to perform background checks using fingerprint identification records in an investigation, you must pay the department the costs incurred for this service.

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

(1) You must pay a non-refundable \$1,000 fee at the time you file an application requesting approval of your proposed change of control.

(2) You must pay a non-refundable \$500 fee to obtain the department's prior determination of whether a person would be considered a person in control and whether a change of control application must be filed. If the department determines that a change of control application is required, the prior determination fee will be applied to the fee required under paragraph (1) of this subsection.

(3) If the department's review of your change of control application or prior determination request requires more than eight employee hours, you must pay an additional review fee of \$120 [~~\$75~~] per employee hour for every hour in excess of eight hours.

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152, and this chapter.

(h) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §152.107, you must pay a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 152, this chapter, or a department directive, you must pay for the additional examination at a rate of \$120 [~~\$75~~] per hour for each examiner required to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) If the department travels out-of-state to conduct your examination, you must pay for all associated travel expenses.

(4) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 152, you must pay an examination fee of \$120 [~~\$75~~] per hour for each examiner and any associated travel expenses.

(i) - (j) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402745

Robert K. Nichols

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



7 TAC §33.51

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC §33.51 (§33.51), concerning providing information to customers on how to file a complaint. The proposed amendment arises from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and is proposed to revise an outdated citation. Effective September 1, 2023, Senate Bill 895 repealed Chapter 151 of the Texas Finance Code (Finance Code) and added Chapter 152 relating to the regulation of money services businesses.

The proposed amendment to §33.51 updates a citation referencing Chapter 151 to instead reference Chapter 152 of the Finance Code.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed amended rules.

Director Saucillo also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the amended rule will be in effect, the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

For each year of the first five years that the amended rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities nor a difference in the cost of compliance for these entities.

To be considered, comments on the proposal must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin,

Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §152.052 which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

No statutes are affected by the proposed amendment.

§33.51. *How do I Provide Information to My Customers about How to File a Complaint?*

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

(c) Must I provide notice to customers about how to file complaints? Yes. You must tell each of your customers how to file a complaint concerning the money transmission or currency exchange business you conduct under Finance Code, Chapter 152 [154], in accordance with this section.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402746

Robert K. Nichols

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



7 TAC §33.81

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §33.81, concerning report requirements for digital asset service providers. The new rule is proposed to clarify how a digital asset service provider may comply with annual report requirements found in Texas Finance Code, §160.004(d)-(f).

The proposed new rule arises from the passage of House Bill 1666 during the 88th legislative session. Effective September 1, 2023, House Bill 1666 adopted Chapter 160 of the Texas Finance Code relating to regulation of digital asset service providers. Chapter 160 adds certain restrictions and requirements for money transmission licensees which also qualify as digital asset service providers in an effort to increase the security of consumer funds deposited with the entity.

The department has identified certain provisions of Chapter 160 which without clarification represent an obstacle to fully implementing the chapter. The department reviewed feedback from industry in determining how these provisions may be clarified to ensure effective compliance by covered entities.

Pursuant to Texas Finance Code, §160.004(d), digital asset services providers are required to file an annual report with the department which must include:

- (1) an attestation by the digital asset service provider of outstanding liability to digital asset customers;
- (2) evidence of customer assets held by the provider;
- (3) a copy of the provider's plan under Subsection (c); and

(4) an attestation by an auditor that the information in the report is true and accurate.

Section 160.004(e) requires an auditor fulfilling the requirements of §160.004 to be an independent certified public accountant licensed in the United States and to apply attestation standards adopted by the AICPA.

As noted above, §160.004(d)(4) requires the auditor to provide an attestation that the information submitted by the digital asset service provider is true and accurate. This conflicts with AICPA attestation standards as there is no standard resulting in a "true and accurate" statement by the auditor. The proposed rule resolves this issue by clarifying that the auditor meets this requirement by performing an examination and providing an unqualified opinion as to whether the items submitted by the digital asset service provider are fairly stated, in all material respects.

To ensure digital asset service providers may effectively comply with the annual report requirement, the proposed new rule thus provides clarity as to the requirements of §160.004(d)(4) by defining the applicable attestation standard the auditor must apply, consistent with §160.004(e).

Director Jesus (Jesse) Saucillo, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Director Saucillo also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is clarity as to what is required under Chapter 160 and thus enhanced consumer protection.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rule will be in effect, the rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; and
- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2024. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Texas Finance Code, §160.006, which provides commission may adopt rules to administer and enforce this chapter, including rules necessary and appropriate to implement and clarify this chapter.

Texas Finance Code, §160.004, is affected by the proposed new section.

§33.81. Digital Asset Service Provider Report.

A Digital Asset Service Provider satisfies the requirements of Section 160.004(d)(4) of the Texas Finance Code by submitting an unqualified opinion by an auditor performing an examination regarding whether the items required under Section 160.004(d)(1)-(3) are fairly stated, in all material respects.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402747

Robert K. Nichols

General Counsel

Texas Department of Banking

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 475-1382



TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 184. SPORTS AND EVENTS TRUST FUND

The Office of the Governor, Economic Development and Tourism Office ("Office") proposes the repeal of 10 Texas Administrative Code ("TAC"), Chapter 184, concerning the Sports and Events Trust Fund. The Office determined the repeal was necessary during its review of the chapter under Section 2001.039, Texas Government Code. Elsewhere in this issue, the Office is proposing a new Chapter 184 to replace the repealed provisions.

REASONED JUSTIFICATION

As part of its review under Section 2001.039, Texas Government Code, the Office determined Chapter 184 should be repealed and replaced in its entirety with new rules that are substantially similar, but that have been reorganized to enhance readability, and from which unnecessary or outdated language has been removed. The proposed new rules also provide additional guidance and clarity about the types of expenditures that may be reimbursed, the documentation required to support reimbursement requests, and implement other changes to promote efficiency and ensure consistency in the application of program rules.

FISCAL NOTE

Adriana Cruz, Executive Director of Texas Economic Development & Tourism, Office of the Governor, has determined that the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction of costs, or loss or increase in revenue to the state or local governments as a result of

enforcing or administering the repeal. Additionally, Ms. Cruz has determined that enforcing or administering the repeal does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT

Ms. Cruz has determined for the first five-year period the proposed repeal is in effect there will be a benefit to applicants and the general public because the proposed repeal and replace of the rules related to the Events Trust Fund and the Major Events Reimbursement Program (collectively referred to as the "Program") will provide greater clarity and ensure consistency in the rules. Ms. Cruz has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to offer clarity to applicants and help the Office better administer the rules.

PROBABLE ECONOMIC COSTS

Ms. Cruz has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with this repeal.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.

Ms. Cruz has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Office is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed repealed and new rules are in effect, the repeals and new rules:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) do not create new regulations;
- 6) will expand certain existing regulations, limit certain existing regulations, and repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Ms. Cruz has determined that there are no private real property interests affected by the proposed repeal. Thus, the Office is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed repeals may be submitted to Gene Cervenka, Office of the Governor, Economic Development and Tourism Office, P.O. Box 12428, Austin, Texas 78701, or by email to eventsfund@gov.texas.gov with the subject line "Events

Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on August 4, 2024, which is at least 30 days from the date of publication in the *Texas Register*.

SUBCHAPTER A. AUTHORITY AND APPLICABILITY, PURPOSE, CONSTRUCTION OF RULES AND GENERAL DEFINITIONS

10 TAC §§184.1 - 184.4

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter A. No other statutes, articles, or codes are affected by the proposed repeals.

§184.1. *Authority and Applicability.*

§184.2. *Purpose.*

§184.3. *Construction of Rules.*

§184.4. *General Definitions.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402728

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100



SUBCHAPTER B. MAJOR EVENTS REIMBURSEMENT PROGRAM DEFINITIONS, ELIGIBILITY, PARTICIPATION AND DEADLINES

10 TAC §§184.10 - 184.13

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas

Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter B. No other statutes, articles, or codes are affected by the proposed repeals.

§184.10. *Definitions.*

§184.11. *Eligibility.*

§184.12. *Request to Participate in the Major Events Reimbursement Program.*

§184.13. *Major Events Reimbursement Program Deadlines.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402729

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100



SUBCHAPTER C. EVENTS TRUST FUND PROGRAM DEFINITIONS, ELIGIBILITY, PARTICIPATION AND DEADLINES

10 TAC §§184.20 - 184.23

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter C. No other statutes, articles, or codes are affected by the proposed repeals.

§184.20. *Definitions.*

§184.21. *Eligibility.*

§184.22. *Request to Establish a Trust Fund.*

§184.23. *Events Trust Fund Program Deadlines.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402730

Gene Cervenka
Senior Finance Program Specialist
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 936-0100



SUBCHAPTER D. REQUIRED REPORTS

10 TAC §§184.30 - 184.33

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter D. No other statutes, articles, or codes are affected by the proposed repeals.

§184.30. *Attendance Certification.*

§184.31. *Submission of Event Support Contract.*

§184.32. *Other Information Required by the Office.*

§184.33. *Post Event Report Information for Major Events Reimbursement Program.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402731
Gene Cervenka
Senior Finance Program Specialist
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 936-0100



SUBCHAPTER E. DISBURSEMENT PROCESS

10 TAC §§184.40 - 184.45

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter E. No other statutes, articles, or codes are affected by the proposed repeals.

§184.40. *Disbursements for Event Costs.*

§184.41. *Documentation Required to Initiate Disbursement Process.*

§184.42. *Extension of Time to Submit Disbursement Documentation.*

§184.43. *Disbursement of Trust Funds.*

§184.44. *Allowable Costs.*

§184.45. *Unallowable Costs.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402732
Gene Cervenka
Senior Finance Program Specialist
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 936-0100



SUBCHAPTER F. EVENT SUPPORT CONTRACTS

10 TAC §§184.50, §184.51

STATUTORY AUTHORITY.

The repeal is proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The repeal is also proposed pursuant to section 475.0004, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes this repeal under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter F. No other statutes, articles, or codes are affected by the proposed repeals.

§184.50. *Requirements for Event Support Contracts.*

§184.51. *Contract Guidelines.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402733
Gene Cervenka
Senior Finance Program Specialist
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 936-0100

◆ ◆ ◆

CHAPTER 184. SPORTS AND EVENTS TRUST FUND

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") proposes new 10 TAC §§184.1 - 184.3, 184.10 - 184.13, 184.20 - 184.22, 184.30, 184.31, 184.40 - 184.45, 184.50, and 184.51, concerning the Sports and Events Trust Fund. During its review of Chapter 184 pursuant to Section 2001.039, Texas Government Code, the Office determined current Chapter 184 should be repealed in its entirety and replaced by a new Chapter 184. The Office is proposing the repeal of the current Chapter 184 elsewhere in this issue.

EXPLANATION AND JUSTIFICATION OF THE RULES

As part of its review under Section 2001.039, Texas Government Code, the Office determined Chapter 184, concerning Sports and Events Trust Fund (the "Program"), should be repealed and replaced in its entirety with new rules that are substantially similar, but that have been reorganized for comprehensibility and readability, and from which unnecessary or outdated language has been removed. The proposed new rules also provide additional guidance, simplicity, and clarity about the types of expenditures that may be reimbursed, the documentation required to support reimbursement requests, remove references to a program that has not been utilized, and implement other changes to promote efficiency and ensure consistency in the application of program rules.

RULE REVIEW CHANGES

The Office, under its rulemaking authority in Sections 475.0005, 478.0002, and 480.0002, Texas Government Code, and as part of its review of existing rules, initiated a rule review under Section 2001.039, Texas Government Code, to promote clarity and administrative efficiency, aid applicants in the use of the Program, simplify rule language, and enhance the usability and comprehensibility of the rules by eliminating surplus language, clarifying provisions, restructuring complicated rules, and updating Program requirements.

SECTION BY SECTION SUMMARY

Proposed new §184.1 is substantially similar to current §184.3 and clarifies that, if adopted, the rules applied to a request are the rules in effect at the time of a request to participate in the Major Events Reimbursement Program or the Events Trust Fund Program. Proposed new §184.1(b) also establishes the Chief of Staff of the Office of the Governor or the Chief of Staff's designees have the authority to waive any rules not statutorily imposed upon a showing that the action is appropriate. The proposed new rule also removes references to the Motor Sports Racing Trust Fund, which is a program that has not been used by the public and the Texas Legislature has not specifically directed this office to adopt rules related to that program.

Proposed new §184.2 is substantially similar to current §184.4 and updates definitions for the Events Trust Fund and the Major Events Trust Fund and relocates all definitions from the chapter to a single rule for ease of reference and clarity. The proposal establishes a new definition, "event participant," which clarifies that costs related travel, per diems, and certain other costs are limited to expenditures that directly relate to individuals whose participation is integral to the event. The proposed new §184.2 also does not include definitions from the current rule that were 1) exact or near-exact copies of definitions that exist in statute,

2) prescriptive and, therefore, better located in prescriptive rules rather than in a descriptive definitions rule, or 3) not used in any rules and do not appear in any statutes.

Proposed new §184.3 introduces a "Buy Texas" requirement that encourages applicants to utilize products or services located in Texas for items for which it will seek reimbursement when such products or services are available under comparable conditions to those offered outside of the state. The legislature found in Section 475.0003(3), Texas Government Code, that eligible events conducted in this state will provide opportunities for local and Texas businesses to create jobs that pay a living wage. New §184.3 is proposed in accordance with that legislative finding to help facilitate Texas business growth and local job creation through this Buy Texas provision.

Proposed new §184.10, which is substantially similar to current §184.11, updates and clarifies eligibility requirements for the Major Events Reimbursement Program. The proposed new rule also makes technical changes and updates statutory citations to reflect current law. Proposed new §184.10(a)(5) underscores a requirement in statute that a site selection organization must submit a human trafficking plan to the Office for an event to be eligible under the Major Events Reimbursement Program.

Proposed new §184.11 is substantially similar to current §184.12 and makes technical changes and clarifies the information and documentation required to be submitted to the Office in a request to participate in the Major Events Reimbursement Program. To better assist the Office in ensuring compliance with Section 478.0051(b), Texas Government Code, proposed new §184.11(a)(4) implements a new requirement that an applicant submit documentation to the Office that clearly demonstrates a site selection organization undertook a highly competitive selection process to select the applicable event site.

Proposed new §184.12 makes technical and clarifying edits to the Major Events Reimbursement Program deadlines and updates statutory and regulatory citations.

Proposed new §184.13 relocates current §184.33 to Subchapter B. This action consolidates all regulations that apply solely to the Major Events Reimbursement Program into a single subchapter.

Proposed new §184.20, which is substantially similar to current §184.21, updates and clarifies eligibility requirements for the Events Trust Fund Program. Proposed new §184.20(b) clarifies that an applicant may not submit more than ten events during any twelve-month period-rather than during a state fiscal year-to better align with Section 480.0051, Texas Government Code.

Proposed new §184.21 is substantially similar to current §184.22 and makes technical changes and clarifies the information and documentation applicants are required to submit to the Office in a request to establish a trust fund for the Events Trust Fund Program. To better assist the Office in ensuring compliance with Section 480.0051(1), Texas Government Code, proposed new §184.21(a)(4) implements a new requirement that an applicant submit documentation to the Office that clearly demonstrates a site selection organization undertook a highly competitive selection process to select the applicable event site.

Proposed new §184.22 makes technical and clarifying edits to the Events Trust Fund Program deadlines and updates statutory and regulatory citations.

Proposed new §184.30 is substantially similar to current §184.30 and updates requirements for the calculation and submission of attendance certification information for the Program. Specif-

ically, proposed new §184.30(b)(1) - (5) require applicants to submit available information to the Office that reflects the total amount of individuals in attendance at the applicable event—rather than general sales information or registration lists—to better reflect actual event attendance. The proposed rule clarifies that surveys may be used to assist with determining the estimated number of event attendees who are not residents of Texas, but may not be used to determine actual event attendance, unless submitted with additional data or documentation that better reflects actual event attendance. Proposed new §184.30(c) clarifies that multi-day events shall have actual attendance reported per day, as opposed to reporting the average attendance at the event, and in must be in accordance with the categories and estimated numbers of attendees upon which the economic impact study was based. Proposed new §184.30(d) updates the threshold at which the Office will reduce the amount of a disbursement if an event's actual attendance figures are significantly lower than the estimated attendance figures.

Proposed new §184.31, which is substantially similar to current §184.32, establishes that the Office may request information necessary to administer the Program and makes technical and clarifying edits.

Proposed new §184.40, which is substantially similar to current §184.40, establishes that the Office may make a disbursement from an applicable trust fund for expenditures that are obligated by an event support contract and directly attributable to the preparation for or the presentation of an event. Proposed new §184.40 also makes technical and clarifying changes to better aid applicants and the Office in its administration of the Program.

Proposed new §184.41 is substantially similar to current §184.41 and updates and clarifies the documentation applicants must submit to initiate the disbursement process for event-related expenditures. The Office routinely receives disbursement requests that lack sufficient supporting documentation, which hinders the timely administration of the Program and requires the Office to seek additional documentation or to deny requests for reimbursement that may have otherwise been approved if appropriate documentation was submitted.

Proposed new §184.42 is similar to current §184.42, but more clearly establishes the method by which applicants may request an extension of time to submit disbursement documentations and clarifies that the Office may grant such an extension upon an Applicant's showing of good cause.

Proposed new §184.43 is substantially similar to current §184.34 and makes technical changes regarding the disbursement of trust funds.

Proposed new §184.44, which is similar in substance to current §184.44, establishes that reimbursable costs must be supported by an event support contract, be directly attributable to the preparation for or presentation of the event, meet all documentation requirements, and not be a disallowed cost. Proposed new §184.44(b)(3) allows a limited reimbursement for purchased items or equipment that are retained by the applicant, and that will continue to derive value after an event. Proposed new §184.44(b)(8) no longer provides for applicants to be able to seek reimbursement for offering event facilities to site selection organizations at no cost. To better aid applicants in identifying other allowable costs, the Office proposes to expand general terms, such as costs for "barriers," and "medical services." The proposed new rule also clarifies that hourly pay or overtime compensation for certain non-health and safety personnel

is an allowable cost for disbursement. The proposed rule also updates allowable expenses for rental vehicles to reflect current market rates and clarifies the types of expenses related to meals, mileage, rental cars, parking, and other travel-related expenses that are allowable expenses. Lastly, the proposed rule no longer provides for the reimbursement of hotels and lodging, flights, and awards, as the current rules allow. Proposed new §184.44(b)(21) updates the circumstances under which the Office may reimburse host fees, participation fees, sanction fees, or other similar fees, and specifies that the reimbursement of such fees is only available to applicants under the Major Events Reimbursement Program, not the Events Trust Fund.

Proposed new §184.45 is substantially similar to current §184.45 and updates the list of costs that are not reimbursable. The new provision provides technical edits to ensure consistency with the applicable rules and statutes. The proposed rule establishes that no taxes—including those imposed by other states, local governments, and the federal government, as well as fees related to the environment, heavy equipment usage, or fuel surcharges—that the applicant paid may be reimbursed. To ensure consistency with current rules relating to the purchase of personal items or services, the rule prohibits reimbursement for items that will derive future value at separate events and that are retained by individuals or entities other than the applicant. The proposed rule clarifies the circumstances under which the Office will not reimburse host fees, participation fees, sanction fees, or other similar fees. The proposal clarifies what the Office considers to be "hospitality" expenditures.

Proposed new §184.50, which is substantially similar to current §184.50, implements technical edits and updates that simplify the requirements for an Event Support Contract.

Proposed new §184.51, which is substantially similar to current §184.51, implements technical edits and updates to clarify and simplify event support contract guidelines. Proposed new §184.51(c)(4) requires applicants to clearly detail event-related expenditures in an event support contract.

FISCAL NOTE

Adriana Cruz, Executive Director of Texas Economic Development and Tourism Office, Office of the Governor, has determined that the first five-year period the proposed rules are in effect, there will be no additional estimated cost, reduction of costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rules. Additionally, Ms. Cruz has determined that enforcing or administering the rules does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT

Ms. Cruz has determined for the first five-year period the proposed rules are in effect there will be a benefit to applicants and the general public because the proposed rules replace the repeal of the current rules related to the Events Trust Fund and the Major Events Reimbursement Program (collectively referred to as the "Program") and will provide greater clarity and consistency within the rules. Ms. Cruz has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to offer clarity to applicants and help the Office better administer the Program.

PROBABLE ECONOMIC COSTS

Ms. Cruz has determined for the first five-year period the proposed rules are in effect, there will be no additional economic costs to persons required to comply with the proposed rules.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.

Ms. Cruz has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Office is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT

Ms. Cruz has determined that the proposed rules will have no impact on local employment or a local economy. Thus, the Office is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Cruz has determined that during each year of the first five years in which the proposed rules are in effect, the rules:

- 1) will not create or eliminate a government program;
- 2) will not require the creation of new employee positions or the elimination of existing employee positions;
- 3) will not require an increase or decrease in future legislative appropriations to the OOG;
- 4) will not require an increase or decrease in fees paid to the OOG;
- 5) will create new regulations;
- 6) will expand certain existing regulations, limit certain existing regulations, and repeal existing regulations;
- 7) will not increase or decrease the number of individuals subject to the applicability of the rules; and
- 8) will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

Ms. Cruz has determined that there are no private real property interests affected by the proposed rules. Thus, the Office is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

REQUEST FOR PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Gene Cervenka, Office of the Governor, Economic Development and Tourism Office, P.O. Box 12428, Austin, Texas 78701, or by email to eventsfund@gov.texas.gov with the subject line "Events Rules." The deadline for receipt of comments is 5:00 p.m., Central Time, on June 21, 2024, which is at least 30 days from the date of publication in the *Texas Register*.

SUBCHAPTER A. APPLICABILITY AND CONSTRUCTION OF RULES, GENERAL DEFINITIONS AND REQUIREMENTS

10 TAC §§184.1 - 184.3

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under Section 2001.039, Texas Government Code.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter A. No other statutes, articles, or codes are affected by the proposed rules.

§184.1. Construction of Rules.

(a) The Office of the Governor will apply the rules in effect at the time of a request to participate in the Major Events Reimbursement Program or Events Trust Fund Program.

(b) The Chief of Staff or designee may suspend or waive any provision not statutorily imposed, in whole or in part, when, at the discretion of the Chief of Staff or designee, the particular facts or circumstances render such waiver of the Section appropriate in a given instance.

§184.2. General Definitions.

The words and terms used in this Chapter have the meanings ascribed to them in the statutes governing the programs established in Title 4, Subtitle E-1, Texas Government Code, or as defined in this Section:

(1) Applicant--A local government corporation that meets the requirements of Section 475.0151, Texas Government Code; an endorsing municipality; an endorsing county; or a local organizing committee, that submits to the Office an application to participate in the Major Events Reimbursement Program or Events Trust Fund Program.

(2) Day--A calendar day.

(3) Direct cost--Any cost that is directly attributable to the preparation for or presentation of an event and:

(A) for purposes of Major Events Reimbursement Program events, are necessary or desirable for the preparation for or presentation of an event;

(B) for purposes of Events Trust Fund events, are necessary for the preparation for or presentation of an event; and

(C) does not include:

(i) any expense that the Office, in its sole discretion, determines is an indirect, administrative, or overhead cost;

(ii) any discount or concession amounts related to venue rental; or

(ii) any expense that is recouped or refunded by other parties relating to the same expense or obligation.

(4) Direct spending--The amount of incremental increase in tax receipts for the 30-day period that ends one day after the last day of the event that are directly attributable to spending related to the preparation for or presentation of an event.

(5) Estimate--The Office's determination of the incremental increase in tax receipts that are directly attributable to the preparation for or presentation of an event eligible to be deposited in the trust fund for an eligible event.

(6) Event participant--An individual whose participation is integral to the presentation of an event, such as an event competitor, judge, timekeeper, scorekeeper, referee, or other similar person.

(7) Events Trust Fund--The fund established by the Office for the event pursuant to Section 478.0152, Texas Government Code.

(8) Local organizing committee--A nonprofit corporation or its successor in interest that:

(A) has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid with a site selection organization for selection as the site of an event; or

(B) with the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host an event.

(9) Local share--The contribution to the fund made by or on behalf of an applicant pursuant to Texas Government Code Sections 478.0152, 478.0153, 480.0152, or 480.0153.

(10) Major Events Reimbursement Program Trust Fund--The trust fund established by the Office for the event pursuant to Texas Government Code Section 478.0152.

(11) Market area--The geographic area within which the Office determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for or presentation of the event and related activities.

(12) Office--The Texas Economic Development and Tourism Office within the Office of the Governor.

(13) Publicly owned property--Any property that is owned by a governmental unit as defined by Texas Civil Practices and Remedies Code, Section 101.001(3).

(14) Trust fund--The fund created by the Texas Comptroller of Public Accounts, at the direction of the Office and designated as either the Major Events Reimbursement Program Fund or Events Trust Fund for the event.

§184.3. Buy Texas.

Applicants shall utilize products or services located in Texas for items for which it will seek reimbursement from a trust fund when such products or services are available at a comparable price and in a comparable period of time to products produced or for services offered outside this state. When requested by the Office, the applicant shall furnish documentation of direct costs or a description of good faith efforts to do so.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402734

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100

◆ ◆ ◆
SUBCHAPTER B. GENERAL REQUIREMENTS: MAJOR EVENTS REIMBURSEMENT PROGRAM

10 TAC §§184.10 - 184.13

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under section 2001.039.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter B. No other statutes, articles, or codes are affected by the proposed rules.

§184.10. Eligibility.

(a) An event is eligible for participation in the Major Events Reimbursement Program if:

(1) the event and the site selection organization for the event are identified in Sections 478.0001(3) and (7), Texas Government Code;

(2) a site selection organization selects a site in Texas after conducting a highly competitive selection process, and:

(A) the site selection organization considered one or more sites that are not located in this state; and

(B) the event will be held:

(i) no more than one time in a calendar year; or

(ii) each year for a period of years under an event support contract, but no more than one time each calendar year for the term of the event support contract; and

(3) the site selected in this state is:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states;

(4) the Office determines that the incremental increase in tax receipts equals or exceeds \$1 million per year for the event; and

(5) not later than the 30th day before the first day of the event, the site selection organization submits a plan to prevent the trafficking of persons in accordance with Section 478.0051(b)(5), Texas Government Code.

(b) For a multi-year event described in Subsection (a)(2)(B)(ii) of this Section, the Office shall calculate the incremental increase in tax receipts as if the event did not occur in a prior year for purposes of Subsection (a)(4) of this Section.

(c) The requirements of Subsection (a)(2) of this Section do not apply to an event described by Section 478.0053, Texas Government Code.

(d) An applicant is prohibited from receiving disbursements for the same event under more than one type of program authorized in Title 4, Subtitle E-1, Texas Government Code, but qualified applicants that were denied participation in the Major Events Reimbursement Program may apply for the Events Trust Fund Program.

§184.11. Request to Participate in the Major Events Reimbursement Program.

(a) An applicant seeking the establishment of a trust fund for the Major Events Reimbursement Program must submit:

(1) a completed and signed application;

(2) a communication from the municipality or county in which the event will be held, signed by a person with authority to bind the municipality or county, in which the municipality or county requests to participate in the trust fund program;

(3) a signed letter from the site selection organization selecting the site in Texas that includes information necessary to establish that the site was selected through a highly competitive selection process, including, but not limited to, all locations that submitted bids to host the event;

(4) documents that reflect the site selection organization engaged in a highly competitive selection process and considered at least one location outside of Texas to host the event as detailed in §184.41(b)(3) of this Chapter, concerning Documentation Required to Initiate Disbursement Process;

(5) the economic impact study specified in Subsection (b) of this Section, and any other data specified by the Office; and

(6) unless excepted under §184.10(c) of this Chapter, concerning Eligibility, documentation sufficient to establish that, prior to selecting the applicant's location as the site of the event, the site selection organization considered one or more sites not in this state to locate and conduct the event, including:

(A) the bid documentation the applicant submitted to the site selection organization as part of the highly competitive selection process to demonstrate the applicant's suitability and desirability as the location to host the event; and

(B) other documentation that indicates a highly competitive selection process occurred, such as:

(i) communications made by or on behalf of the applicant to the site selection organization;

(ii) documents from reputable third-party sources, such as news articles, public postings, or notices; and

(iii) communications between the site selection organization and all non-Texas sites.

(b) The economic impact study referenced in Subsection (a)(5) of this Section must:

(1) include sufficient data for the Office to determine the estimated incremental increase in tax revenue directly attributable to the preparation for or presentation of the event or activities directly related to the event, including:

(A) detailed information about the event-related expenditures of attendees, including an estimate of the spending of people expected to attend the event who are not residents of this state;

(i) during a reasonable time prior to and after the event and during the event; and

(ii) in the market area of the event;

(B) if available, information about event expenditures incurred or to be incurred by the event organizers; and

(C) if the applicant requests the Office to consider secondary impacts of the event, any other data or information addressing the secondary economic impact of the event in the requested market area during the ten months immediately following the last day of the event must be provided separately and in an easily distinguishable manner from data listed in Subparagraph (A) of this Paragraph;

(2) address only the incremental increase in tax receipts for the tax types identified in Section 478.0102(1)-(5), Texas Government Code; and

(3) include a certification from the persons who prepared the study, attesting to the accuracy of the information provided.

(c) The request for participation and the economic impact report shall propose and provide information supporting the applicant's desired market area. The Office, in its sole discretion, shall make the final determination of the market area. The applicant must include in the market area an endorsing municipality or endorsing county that has been selected as the site for the event.

(d) The request for participation and the economic impact report shall include a list of all event activities proposed to be included in the estimate, and must include data for each activity, including, at a minimum:

(1) projected attendance figures;

(2) the methodology from §184.30 of this Chapter, concerning Attendance Certification, that will be used for determining the total actual attendance at the event;

(3) the projected spending of attendees, including an estimate of the spending of people expected to attend the event who are not residents of this state; and

(4) any anticipated expenditure information related to the activity.

(e) The request for participation must be accompanied by a certification provided by an authorized representative from any participating endorsing municipality, endorsing county, and local organizing committee attesting to the accuracy of the information provided.

(f) A request for participation must be submitted not earlier than one year and not later than 45 days before the day the event begins. Requests submitted outside this time frame shall not be reviewed.

(g) All requests and required documentation shall be submitted electronically to: eventsfund@gov.texas.gov.

(h) The Office shall determine the amount of incremental increase in tax receipts not later than the 30th day after the day the Office receives the completed request for participation and all related information required by this Chapter.

(i) The Office may reject a request for participation that does not meet the requirements established by this Section. The Office may also seek clarification or supplementation of information submitted under this Section if the information sought would not, in the Office's sole discretion, materially change the request for participation.

§184.12. Major Events Reimbursement Program Deadlines.

(a) Application Deadline. Applications for participation in the Major Events Reimbursement Program must be submitted not earlier than one year and not later than 45 days before the first day of the event.

(b) Determination Deadline. Not later than the 30th day after the day the Office receives a completed request for participation and all required information, the Office will determine:

(1) whether the event meets the eligibility requirements of Chapter 478, Texas Government Code, for the establishment of a Major Events Reimbursement Program Fund; and

(2) the amount of incremental increase in tax receipts that is directly attributable to the preparation for or presentation of the event.

(c) Event Support Contract Submission. Before the first day of the event, the applicant shall submit an event support contract compliant with Subchapter F of this Chapter, concerning Event Support Contracts, and any other documentation required by this Chapter. If the event support contract is not timely submitted, the Office shall disqualify the applicant from participation in the program for that event, thereby rendering the applicant ineligible for reimbursements from the trust fund established for the event.

(d) Attendance Certification Deadline. The applicant shall submit the attendance certification and supporting documentation required by §184.30 of this Chapter, concerning Attendance Certification, not later than 45 days after the last day of the event. If the attendance documentation for the event is not timely submitted, the Office shall disqualify the applicant from participation in the program, thereby rendering the applicant ineligible for reimbursements from the trust fund established for the event.

(e) Local Share Submission. Not later than 90 days after the last day of the event, the applicant shall remit to the Office the local share contribution to the fund made by or on behalf of an applicant pursuant to Sections 478.0152 and 478.0153, Texas Government Code. The applicant shall not submit the local share on a weekend or state holiday. If the local share is not timely submitted, the Office shall close the trust fund established for the event.

(f) Disbursement Request Submission. The applicant shall submit all requests for disbursements from the trust fund and supporting documentation no later than 180 days after the last day of the event. The Office shall disqualify any disbursement requests that are not timely submitted, thereby making any untimely requests ineligible for reimbursement. Notwithstanding anything in this Section to the contrary, the Office may request and consider additional supporting documentation related to timely submitted disbursement requests at any time, regardless of whether the Office receives such information after the deadline established by this Subsection.

(g) An applicant must provide an annual audited financial statement required by the Office no later than the end of the fourth month after the date the period covered by the financial statement ends.

§184.13. Post-Event Report Information for Major Events Reimbursement Program.

Upon request by the Office, an applicant to the Major Events Reimbursement Program must provide to the Office any information the Office determines is necessary to comply with its post-event reporting requirements in Section 478.0107, Texas Government Code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.
TRD-202402735

Gene Cervenka
Senior Finance Program Specialist
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 936-0100

◆ ◆ ◆
SUBCHAPTER C. GENERAL REQUIREMENTS: EVENTS TRUST FUND PROGRAM

10 TAC §§184.20 - 184.22

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under section 2001.039.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter C. No other statutes, articles, or codes are affected by the proposed rules.

§184.20. Eligibility.

(a) An event is eligible for participation in the Events Trust Fund Program if:

(1) a site selection organization selects a site in Texas after conducting a highly competitive selection process:

(A) the site selection organization considered one or more sites that are not located in this state; and

(B) the event will be held:

(i) no more than one time in a calendar year; or

(ii) each year for a period of years under an event support contract, but no more than one time each calendar year for the term of the event support contract; and

(2) the site selected in this state is:

(A) the sole site for the event; or

(B) the sole site for the event in a region composed of this state and one or more adjoining states.

(b) During any twelve-month period, an applicant may not submit more than 10 events--only three of which may be non-sporting events--for reimbursement under the Events Trust Fund Program for which the Office determines that the amount of the incremental increase in tax receipts is less than \$200,000. For purposes of this Subsection, a "sporting event" is an event that has the primary purpose of conducting recreational or competitive athletic or physical activities, including individual, team, equestrian, or automotive competitions.

(c) An applicant is prohibited from receiving disbursements for the same event under more than one type of program authorized in Title 4, Subtitle E-1, Texas Government Code, but qualified applicants

that that were denied participation in the Events Trust Fund Program may apply for the Major Events Reimbursement Program.

§184.21. Request to Establish a Trust Fund.

(a) An applicant seeking the establishment of a trust fund for the Events Trust Fund Program must submit:

(1) a completed and signed application;

(2) a communication from the municipality or county in which the event will be held, signed by a person with authority to bind the municipality or county, in which the municipality or county requests to participate in the trust fund program;

(3) a signed letter from the site selection organization selecting the site in Texas that includes information necessary to establish that the site was selected through a highly competitive selection process, including, but not limited to, all locations that submitted bids to host the event;

(4) documents that reflect the site selection organization engaged in a highly competitive selection process and considered at least one location outside of Texas to host the event as detailed in §184.41(b)(3) of this Chapter, concerning Documentation Required to Initiate Disbursement Process;

(5) the economic impact study or other data specified in Subsection (b) of this Section; and

(6) documentation sufficient to establish that, prior to selecting the applicant's location as the site of the event, the site selection organization considered one or more sites not in this state to locate and conduct the event, including:

(A) the bid documentation the applicant submitted to the site selection organization as part of the highly competitive selection process to demonstrate the applicant's suitability and desirability as the location to host the event; and

(B) other documentation that indicates a highly competitive selection process occurred, such as:

(i) communications made by or on behalf of the applicant to the site selection organization;

(ii) documents from reputable third-party sources, such as news articles, public postings, or notices; and

(iii) communications between the site selection organization and all non-Texas sites.

(b) The economic impact study referenced in Subsection (a)(5) of this Section must:

(1) include sufficient data for the Office to determine the estimated incremental increase in tax revenue directly attributable to the preparation for or presentation of the event or activities directly related to the event, including:

(A) detailed information about the event-related expenditures of attendees, including an estimate of the spending of people expected to attend the event who are not residents of this state:

(i) during a reasonable time prior to and after the event and during the event; and

(ii) in the market area of the event; and

(B) if available, information about event expenditures incurred or to be incurred by the event organizers;

(2) address only the incremental increase in tax receipts for the tax types identified in Section 480.0102 (1)-(5), Texas Government Code; and

(3) include a certification from the persons who prepared the study, attesting to the accuracy of the information provided.

(c) The request for participation and the economic impact report shall propose and provide information supporting the applicant's desired market area. The Office, in its sole discretion shall make the final determination of the market area. The applicant must include in the market area an endorsing municipality or endorsing county that has been selected as the site for the event.

(d) The request for participation and the economic impact report shall include a list of all event activities proposed to be included in the estimate, and must include data for each activity, including, at a minimum:

(1) projected attendance figures;

(2) the methodology that will be used for determining the total actual attendance at the event;

(3) the projected spending of attendees, including an estimate of the spending of people expected to attend the event who are not residents of this state; and

(4) any anticipated expenditure information related to the activity.

(e) The request for participation must be accompanied by a certification provided by an authorized representative from each endorsing municipality, endorsing county, and local organizing committee, if applicable, attesting to the accuracy of the information provided.

(f) A request for participation must be submitted not later than 120 days before the day the event begins. The Office will disqualify and not consider requests submitted later than this deadline.

(g) All requests and required documentation shall be submitted electronically to: eventsfund@gov.texas.gov.

(h) The Office shall determine the amount of incremental increase in tax receipts not later than the earlier of:

(1) the 30th day after the day the Office receives the completed request for participation and all related information required by this Section; and

(2) three months before the day of the event.

(i) The Office may reject a request for participation that does not meet the requirements established by this Section. The Office may also seek clarification or supplementation of information submitted under this Section if the information sought would not, in the Office's sole discretion, materially change the request for participation.

§184.22. Events Trust Fund Program Deadlines.

(a) Application Deadline. Applications for participation in the Events Trust Fund Program must be submitted no later than 120 days before the first day of the event.

(b) Determination Deadline. Not later than the earlier of the 30th day after the day the Office receives a completed request for participation and all required information and three months before the day of the event, the Office will determine:

(1) whether the event meets the eligibility requirements of Chapter 480, Texas Government Code, for the establishment of an Events Trust Fund; and

(2) the amount of incremental increase in tax receipts that is directly attributable to the preparation for or presentation of the event.

(c) Event Support Contract Submission. Before the first day of the event, the applicant shall submit an event support contract com-

pliant with Subchapter F of this Chapter, concerning Event Support Contracts, and any other documentation required by this Chapter. If the event support contract is not timely submitted, the Office shall disqualify the applicant from participation in the program for that event, thereby rendering the applicant ineligible for reimbursements from the trust fund established for the event.

(d) Attendance Certification Deadline. The applicant shall submit the attendance certification and supporting documentation required by §184.30 of this Chapter, concerning Attendance Certification, not later than 45 days after the last day of the event. If the attendance documentation for the event is not timely submitted, the Office shall disqualify the applicant from participation in the program, thereby rendering the applicant ineligible for reimbursements from the trust fund established for the event.

(e) Local Share Submission. Not later than 90 days after the last day of the event, the applicant shall remit to the Office the local share contribution to the fund made by or on behalf of an endorsing municipality or endorsing county pursuant to Sections 480.0152 and 480.0153, Texas Government Code. The applicant shall not submit the local share on a weekend or state holiday. If the local share is not timely submitted, the Office shall close the trust fund established for the event.

(f) Disbursement Request Submission. The applicant shall submit all requests for disbursements from the trust fund and supporting documentation by not later than 180 days after the last day of the event. The Office shall disqualify any disbursement requests that are not timely submitted, thereby making those untimely requests ineligible for reimbursement. Notwithstanding the anything in this Section to the contrary, the Office may request and consider additional supporting documentation related to timely submitted disbursement requests at any time, regardless of whether the Office receives such information after the deadline established by this Subsection.

(g) An applicant must provide an annual audited financial statement required by the Office no later than the end of the fourth month after the date the period covered by the financial statement ends.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402736

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100



SUBCHAPTER D. REQUIRED REPORTS

10 TAC §184.30, §184.31

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under section 2001.039.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter D. No other statutes, articles, or codes are affected by the proposed rules.

§184.30. Attendance Certification.

(a) Not later than 45 days after the last day of the approved event, the applicant shall submit an attendance certification based upon a methodology approved by the Office. The certification must be signed by the person who signed the original request for participation or that person's successor, and must include:

(1) total actual attendance;

(2) the estimated number of attendees at the approved event that are not residents of Texas; and

(3) the verifiable source for such numbers.

(b) Approved attendance methodologies are:

(1) ticket scan counts;

(2) turnstile counts;

(3) registration totals;

(4) event participant totals; and

(5) another methodology that is approved by the Office, in its sole discretion, prior to the first day of the event. Surveys shall only be used to assist with determining the estimated number of attendees who are not residents of Texas, and not for actual attendance counts, unless submitted with additional data or documentation that the Office, in its sole discretion, approves.

(c) For purposes of this Section, actual attendance shall be reported:

(1) if the event lasts for more than one day, as actual, not average, attendance per day; and

(2) in accordance with the categories and estimated numbers of attendees upon which the economic impact study was based.

(d) If the actual attendance figures are significantly lower than the estimated attendance numbers, the Office may reduce the amount of a disbursement for an applicant under the trust fund in proportion to the difference and in proportion to the amount contributed to the fund by the entity. Actual attendance at an event is considered significantly lower than estimated attendance when the difference is 15% or greater.

§184.31. Other Information Required by the Office.

(a) Upon request of the Office, the applicant must provide to the Office any additional information, including financial information, that the Office determines is necessary to verify event-related expenditures or to administer the program.

(b) If the applicant fails or refuses to timely provide any information required by statute or this Section, the Office may disqualify the applicant from receiving disbursements from the trust fund established for the event.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.



SUBCHAPTER E. DISBURSEMENT PROCESS

10 TAC §§184.40 - 184.45

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under section 2001.039.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter E. No other statutes, articles, or codes are affected by the proposed rules.

§184.40. Disbursements for Direct Costs.

(a) Disbursements from the trust fund established for the event shall be issued by the Office to reimburse only allowable direct costs that are directly attributable to the preparation for, or presentation of, the approved event related to:

(1) preparing for and presentation of an event in this state in accordance with the event support contract;

(2) the construction, improvement, or renovation of facilities necessary to conduct the event and that are directly attributable to fulfilling obligations of the event support contract, to the extent such expenditures are authorized by law, including Sections 478.0204(b) or 480.0204(b), Texas Government Code, as applicable, and to the extent such expenditures are required by the site selection organization; and

(3) paying the principal of and interest on notes issued by an endorsing municipality or endorsing county in accordance with Sections 478.0204(a) or 480.0204(a), Texas Government Code, as applicable.

(b) Disbursements from the trust fund may not be used to make payments to an applicant or any other entity in relation to expenditures that are not directly attributable to allowable direct costs as set forth in §184.44 of this Chapter, concerning Allowable Direct Costs. Disbursements are subject to verification or audit prior to or after payment by the Office.

§184.41. Documentation Required to Initiate Disbursement Process.

(a) To initiate the disbursement process, the applicant must electronically submit to the Office, no later than 180 days after the last day of the event, the following documentation in a format required by the Office:

(1) a signed disbursement request in the form prescribed by the Office;

(2) an explanation of the expenditures for which the applicant seeks reimbursement in a form prescribed by the Office and with sufficient detail to enable the Office to determine the nature and specifics of the expenditures; and

(3) verifiable source documentation, as detailed in Subsection (b) of this Section, labeled to correspond to the explanation provided in the form required in Paragraph (2) of this Subsection, and that supports the calculation and payment of each expenditure for which the applicant seeks reimbursement.

(b) Unless otherwise approved by the Office before submission, all verifiable source documentation must meet the standards established in this Subsection.

(1) Invoice. A copy of an original invoice or similar documentation that provides a sufficiently detailed, itemized description of the goods or services purchased, including the following:

- (A) the date of the invoice or similar documentation;
- (B) the name of the entity or individual requesting payment;
- (C) the method by which costs were calculated;
- (D) the price of the goods or services;
- (E) the dates on which the goods or services were delivered or provided;
- (F) the location to which the goods or services were delivered or provided; and
- (G) the terms of sale, if any.

(2) Proof of Payment. Documentation that provides sufficient evidence of the transmission, transfer, or payment of the expenditure, including:

- (A) front and back copy of a cleared check;
- (B) bank statement reflecting the transaction;
- (C) credit card receipt or credit card statement reflecting the charge;
- (D) \$0.00 invoice or vendor statement reflecting an invoice was paid in full; or
- (E) electronic funds transfer or automated clearing house report accompanied by a bank statement.

(3) Internal billing. If applicable, documentation providing justification for expenditures incurred under an event support contract by an applicant for charges for services or facilities provided by a municipality or county for an event, including facility rentals and charges for police, fire, or emergency medical services. The documentation must also detail the direct correlation between the internal billing expenditure and the event.

(4) Advertising, publications, and signage. If applicable, copies of advertising, publications, physical promotional materials, or signage specific to the event. An applicant may submit photographs of advertising, physical promotional materials, and signage in lieu of providing a sample of the actual advertisement or sign.

(5) Staffing costs. If applicable, documentation with clear, verifiable data that details the titles of individuals who worked to prepare for or present the event, the hours they worked, and the description of work they performed, including:

- (A) detailed timesheets; and

(B) agreements and payment information to contract labor for the event.

(6) Expenses of a local organizing committee. If applicable, documentation that reflects prior approval of the disbursement request by each contributing endorsing municipality and endorsing county.

(c) An applicant shall retain all records related to an event for at least seven years following the last day of the event and must make such records available to the Office upon request.

(d) An applicant may redact information not related to the event from any documentation submitted under this Section.

(e) If an applicant, site selection organization, or other third party considers information submitted to the Office to be confidential or excepted from disclosure, the information must be clearly marked as confidential or as excepted from disclosure.

§184.42. Extension of Time to Submit Disbursement Documentation.

(a) The Office may, in its sole discretion, grant an extension to an applicant to submit information required for a completed disbursement request after the 180th day after the last day of the event if the applicant timely submits a request for an extension in accordance with Subsection (b) of this Section and the Office determines the applicant showed good cause or when the particular facts or circumstances render an extension appropriate in a given instance.

(b) The applicant must submit an extension request in a form required by the Office before the 180th day after the last day of the event and must include its justification for the proposed extension of time.

§184.43. Disbursement of Trust Funds.

(a) The Office will only consider a disbursement request that:

(1) is supported by an event support contract;

(2) requests reimbursement for payments or obligations for allowable direct costs; and

(3) is complete, supported by proof of payment or internal billing documentation, and includes all event reimbursements being sought by the applicant for disbursement.

(b) The Office may request additional supporting documentation or justification regarding any costs submitted for a disbursement. The Office, at its sole discretion, may withhold disbursements pending the receipt of any information the Office determines is necessary to appropriately document and support the eligibility of items related to the reimbursement. The Office may deem requests for reimbursement ineligible if the applicant fails to provide the information requested by the Office.

(c) The Office shall not make any disbursements for direct costs until the applicant satisfies all reporting requirements under Subchapter D of this Chapter, concerning Required Reports.

(d) After disbursing all approved reimbursement payments, the Office will return any unexpended balance remaining in the trust fund to each endorsing entity in proportion to the local share contributed by the entity. Any unexpended state share shall be returned to the Comptroller of Public Accounts.

(e) A disbursement made from the trust fund by the Office in satisfaction of an applicant's obligation shall be satisfied proportionately from the state and local share in the trust fund in the proportion of 6.25:1 of state funds to local share, notwithstanding any agreements to the contrary made by an applicant.

(f) If the Office determines, based on information obtained from verifiable sources, including any monitoring, inspection, review or audit conducted by the Office or its authorized representatives, that the applicant received a disbursement in excess of the amount to which the applicant is entitled under applicable law and regulations, or that the applicant provided erroneous information that resulted in an overstatement of the estimated incremental tax receipt increase for an event, then the Office may withhold, offset, recoup, or otherwise require the return of any excess disbursement amounts.

§184.44. Allowable Direct Costs.

(a) The Office may only reimburse costs that:

(1) are required by or provided for under the event support contract;

(2) are not otherwise unallowable by federal or state laws or regulations, including §184.45 of this Chapter, concerning Unallowable Costs;

(3) the Office, in its sole discretion, determines are directly attributable to the preparation for or presentation of the event; and

(4) meet the documentation and other requirements established in statute and this Chapter.

(b) Subject to the requirements of Subsection (a) of this Section, the Office may reimburse the following:

(1) preparation for or presentation of the event in accordance with the event support contract;

(2) structural improvements or fixtures for an event authorized by Sections 478.0205 or 480.0205, Texas Government Code;

(3) any purchased items or equipment, that are otherwise acceptable under this Section, which will continue to derive value after the event and are retained only by the applicant, but reimbursement for such items or equipment is limited to five percent of the cost of the item or equipment;

(4) financing event sites in accordance with Sections 480.0204(a)(1) and 478.0204(a)(1), Texas Government Code;

(5) performance bonds or insurance required for hosting the event;

(6) temporary maintenance to property impacted by the conduct of the event that is directly related to the preparation for or presentation of the event;

(7) expenditures for the public health or safety of people or animals involved in hosting, attending, or participating in the event, including:

(A) water;

(B) security;

(C) professional fire marshal or engineer requirements for event facilities and other event related property or equipment;

(D) portable restrooms, trash receptacles, and other types of sanitation necessities;

(E) shade;

(F) lighting and sound equipment required for security or public safety;

(G) traffic planning and management;

(H) severe weather planning and mitigation;

(I) way-finding signage or staff;

(J) barriers needed for traffic control, crowd control, or similar functions;

(K) required permits and professional or consulting services engaged to acquire permits;

(L) stand-by services, such as medical services, including medical trainers and veterinarians;

(M) accommodations required by and goods or services necessary to remain in compliance with the Americans with Disabilities Act;

(N) public health or safety command center expenses;

(O) credentials; and

(P) costs needed for police, fire, and other emergency operations staff.

(8) event facility costs, including:

(A) cost to rent an event facility, including any internal billing, if the terms of the event support contract require the applicant to reimburse the site selection organization for the cost to rent a facility; and

(B) rental of seating or other furnishings, supplies, or equipment;

(9) labor and other expenditures for staffing services directly attributable to the preparation for or presentation of the event that are performed during the event and within a reasonable time prior to and after the event, including:

(A) hourly pay or overtime for personnel engaged to promote the public health or safety of the event;

(B) hourly pay or overtime for non-health and safety personnel who are hired or contracted specifically to meet objectives of an event; or

(C) compensation for referees, score keepers, timers, and other similar officials required to meet the objectives of an approved event;

(10) market-area transportation and/or parking services, not including personal travel, that are used during the event or within a reasonable time prior to or after the event and are not otherwise compensated or recovered;

(11) temporary signs and banners created specifically for the event;

(12) advertising that:

(A) occurs prior to or during the event; and

(B) includes the event name, date, and location of the event;

(13) promotional items that are nominal in value and created specifically to promote the event;

(14) production costs associated with the production of the event, including staging, rigging, sound and lighting systems;

(15) uniforms created specifically for the event for the use by staff or volunteers;

(16) goods or services necessary to address, prepare for, or remediate the effects of inclement weather that occurs during or immediately before or after the event;

(17) services necessary for the performance of the national anthem of the United States or a foreign nation at the event;

(18) photography or videography services engaged to document the event;

(19) food, the provision of which is directly related to the presentation of the event, is provided on-site to event participants and volunteers, and the value of which does not exceed the CPA's Current Travel Reimbursement Rates;

(20) meals, automobile mileage, rental car, parking fees, and toll fares that meet the following requirements:

(A) the expenditure directly relates to an event participant's participation in the event;

(B) the expenditure is directly related to the preparation for or presentation of the event;

(C) the event participant to whom the expenditure relates does not reside in the event market area;

(D) for automobile mileage, the expenditure does not exceed the allowable rates for state employees, as specified by the CPA's Current Travel Reimbursement Rates; and

(E) for vehicle rentals, the expenditure does not exceed the regular rates for a standard vehicle of the type rented; and

(21) if the event is eligible for the Major Events Reimbursement Program under §184.10 of this Chapter, concerning Eligibility, fees that are payable by the applicant for the right to present or host the event--including hosting fees, sanction fees, participation fees, or other fees the Office, in its sole discretion, determines are similar to such fees--that:

(A) are clearly stated in the application for participation in the trust fund program;

(B) are paid to the site selection organization or entity designated as the recipient of the fees in the event support contract; and

(C) do not include separate expenses associated with conducting the event.

§184.45. Unallowable Costs.

(a) Disbursements for the following costs are prohibited, regardless of their inclusion in an event support contract:

(1) any tax the Office, in its sole discretion, determines is a contribution imposed by a local, state, or federal government or other taxing entity upon an individual or business entity, whether under the name of a charge, surcharge, toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, environmental charge, heavy equipment tax, fuel surcharge, or other name;

(2) gifts of any kind, including tips, gratuities, or honoraria;

(3) grants to any person, entity, or organization;

(4) alcoholic beverages;

(5) food not specifically authorized in §184.44(b)(20) or (22) of this Chapter, concerning Allowable Direct Costs;

(6) travel not specifically authorized in §184.44(22) of this Chapter;

(7) costs related to an applicant's application or participation in the trust fund program, including, but not limited to:

(A) representing any entity, including an applicant or related party, in front of the legislature for any reason;

(B) representing any entity, including an applicant or related party, in front of the Office for the purpose of applying to or seeking reimbursement from the trust fund;

(C) preparing an application to the reimbursement program, a disbursement request, or other event-related documents;

(D) preparing a pre-event or post-event economic impact study;

(E) preparing a pre-event attendance estimate or post-event attendance verification;

(F) conducting any pre-event or post-event survey; or

(G) costs associated with responding to requests for information relating to participation in the program, including requests for information from the Office, the Texas State Auditor's Office, or pursuant to the requirements of the Texas Public Information Act, Chapter 552, Texas Government Code.

(8) expenses related to:

(A) monetary compensation to individuals for participation or competitive performance in an event, including, but not limited to, cash, gift cards, or pre-paid service certificates;

(B) gaming;

(C) raffles; or

(D) giveaways that do not meet the requirements of §184.44(14) of this Chapter;

(9) costs for any personal items or services;

(10) equipment, items, or supplies that will derive future value separate from the event, and are retained by individuals or entities other than the applicant;

(11) hospitality items not available to the general public, appearance or talent fees, and any expenditures related to "VIP" expenses except as permitted under §184.44(18) of this Chapter;

(12) reimbursement of any cost not incurred, such as for lost profit or for an exchange-in-kind or product;

(13) damages of any kind, including damages or lost revenue resulting from inclement weather, notwithstanding §184.44(17) of this Chapter;

(14) any cost or expense of, or related to, constructing an arena, stadium, or convention center;

(15) any cost or expense related to conducting usual and customary maintenance of a facility;

(16) any amount in excess of 5.0% of the cost of any structural improvement made or fixture for an event that is added to a site that is privately owned property where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events;

(17) costs that are not direct costs;

(18) any costs, the reimbursement of which the Office determines, in its sole discretion, could result in a payment to or from a party with an inappropriate conflict of interest;

(19) if the event is an Events Trust Fund event described in subchapter C of this chapter, fees that are payable by the applicant for the right to present or host the event—including hosting fees, sanction fees, participation fees, or other fees the Office, in its sole discretion, determines are similar to such fees; and

(20) any expense or obligation that was recouped, refunded, or otherwise recovered, or that will be recouped, refunded, or otherwise recovered from another entity under the event support

contract relating to the same expense or obligation, the reimbursement of which could result in a net surplus to the applicant.

(b) The Office may deny a disbursement for any event, cost, expense, or obligation the Office deems fiscally irresponsible or not supportive of program objectives.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402738

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100



SUBCHAPTER F. EVENT SUPPORT CONTRACTS

10 TAC §184.50, §184.51

STATUTORY AUTHORITY.

The rules are proposed under Sections 478.0002 and 480.0002, Texas Government Code, which authorize the Office to make rules necessary to implement Chapter 478 and 480, Texas Government Code, respectively. The rules are also proposed pursuant to Section 475.0004, Texas Government Code, which directs the Office to adopt rules to ensure efficient administration of trust fund programs, including rules related to application and receipt requirements. The Office also proposes these rules under Section 2001.004, Texas Government Code, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Finally, the rules are proposed in accordance with the Office's review of this chapter under section 2001.039.

CROSS REFERENCE TO STATUTE

Chapter 184, Subchapter F. No other statutes, articles, or codes are affected by the proposed rules.

§184.50. Requirements for Event Support Contracts.

(a) An event support contract is required for any event that is participating in the Major Events Reimbursement Program or Events Trust Fund Program. The parties to an event support contract shall include, at a minimum, the site selection organization and the applicant.

(b) The event support contract must:

(1) establish the applicant's roles and obligations in the preparation for or presentation of the event;

(2) establish the roles and obligations the site selection organization will undertake to prepare for or present the event;

(3) set out the representations and assurances of the parties with respect to the selection of a site in this state for the location of an event; and

(4) detail the requirements and costs necessary-or in the case of Major Events Trust Fund Program Events, necessary or desirable-for the preparation for or presentation of an event.

(c) Any costs included in the event support contract that are anticipated to be paid, recovered, refunded, or offset from other parties must be clearly identified.

(d) The event support contract must clearly identify any costs that the contract parties intend to be reimbursed from the event trust fund for structural improvements or fixtures for an event site where the improvement or fixture is expected to derive most of its value in subsequent uses of the site for future events.

§184.51. Contract Guidelines.

(a) In considering whether to make a disbursement from the trust fund, the Office will not consider a contingency clause in an event support contract as relieving an applicant's obligation to pay a cost under the contract, as mandated by Sections 478.0202(b) or 480.0202(b), Texas Government Code.

(b) The event support contract must not create or shift obligations or liabilities from the endorsing municipality, endorsing county, local organizing committee, or another party to the Office.

(c) The Office shall not consider for reimbursement any cost that is identified in an event support contract in terms the Office, in its sole discretion, determines are overly broad or too general in nature, such terms include:

(1) blanket "catch-all" terms, such as "any necessary fixtures or improvements;"

(2) references in terms such as "etc." or "miscellaneous" or "as needed," or "other;"

(3) terms that reference the Office's decision-making authority, such as "any expense allowed by Office" or "any expense allowed by statute;" or

(4) any expense that merely references or generally recites the Texas Administrative Code to replace a clear and concise description of the expense.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402739

Gene Cervenka

Senior Finance Program Specialist

Office of the Governor, Economic Development and Tourism Office

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 936-0100



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 134. LICENSING, REGISTRATION, AND CERTIFICATION FOR SURVEYORS **SUBCHAPTER D. EDUCATION**

22 TAC §134.31

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 134, regarding the licensing of registered professional land surveyors, and specifically §134.31, relating to Educational Requirements for Applicants. These proposed changes are referred to as "proposed rules."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 134 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act and Texas Occupations Code Chapter 1071, the Professional Land Surveying Practices Act. The proposed rules address the educational requirements for some applicants for a surveyor-in-training certificate and the educational requirements for all applicants to become a registered professional land surveyor beginning on January 31, 2026.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §134.31 to update the educational requirements for certain applicants for a surveyor-in-training certificate and all applicants to become a registered professional land surveyor. The Professional Land Surveying Practices Act requires applicants for a surveyor-in-training certificate that hold an associate degree or bachelor's degree in anything other than surveying to have, in a combination acceptable to the board, at least 32 hours of formal education in one of seven categories: civil engineering, land surveying, mathematics, photogrammetry, forestry, land law, and physical sciences. After review and consultation with the surveying community, the Board has determined updates in the acceptable combination of 32 hours of formal education is warranted. Land surveying is unquestionably a highly technical field that requires registrants that practice this field have a minimum competency to offer land surveying services to the people of Texas.

To ensure applicants education best prepares them to be competent registered professional land surveyors, the Board proposes to require applicants have at least nine hours of education in land surveying, at least three hours of education in land law, and at least six hours of education in mathematics. The remaining 14 hours of required education can be of any combination of the seven categories found in the Professional Land Surveying Practices Act. Additionally, the proposed rules establish definitions for the seven educational categories found in the Professional Land Surveying Practices Act to provide additional clarification to applicants.

To not adversely impact current students or people already in the process of becoming licensed, the proposed updates will apply to anyone who has not already applied for a surveyor-in-training certificate as of January 1, 2026.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Michael Sims, P.E., Director of Compliance and Enforcement for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Sims has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Sims has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be increased competency in registered professional land surveyor applicants achieved by ensuring that the applicants have adequate formal education in land surveying specific topics.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Sims has determined that for each year of the first five-year period the proposed rules are in effect, there may be a small, but currently unquantifiable, cost to some applicants for a surveyor-in-training certificate or registration as a professional land surveyor.

The proposed rules differ from the current rules by establishing minimum educational requirements in three categories: land surveying, land law, and mathematics. Any applicant with an associate degree or bachelor's degree in surveying is anticipated to meet the proposed requirements with no further action. However, an unknown number of applicants with an associate or bachelor's degree in anything other than land surveying may need to take additional courses to meet the proposed requirements. The actual cost is unknown as it will vary depending on how many courses are needed and the cost per course at the institute of higher education the applicant chooses to take the courses to meet the proposed updated requirements. To allow time for sufficient planning by applicants, the proposed rules will only apply to people beginning the registration process after January 1, 2026.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules are not subject to the requirements of Government Code §2001.0045 because the Board is a self-directed, semi-independent agency. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rule does not expand an existing regulation but does adjust the educational requirements within the existing framework of the Professional Land Surveying Practices Act.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, via email to rules@pels.texas.gov; or via mail to 1917 S. Interstate 35, Austin, Texas 78741.

STATUTORY AUTHORITY

The proposed rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Texas Engineering Practice Act and the Professional Land Surveying Practices as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

SECTIONS AFFECTED

The proposed rules implement the following sections of the law: Texas Occupations Code §§1071.253 and 1071.254.

§134.31. Educational Requirements for Applicants.

(a) Applicants for certification as a surveyor-in-training shall have graduated from at least one of the educational programs or program combinations listed in §1071.253 of the Surveying Act.

(1) For the purpose of meeting the requirements found in §1071.253(a)(2)(A) or §1071.253(a)(4)(A), the courses listed in sub-

paragraphs (A) - (C) of this paragraph must be taken in order to be eligible for a surveyor-in-training certificate:

(A) a minimum of 9 semester hours (13.5 quarter hours) of land surveying. For the purposes of this chapter, land surveying courses acceptable to the board may include, but are not limited to, the topics of basic surveying, advanced surveying, route surveying, engineering surveying, geospatial engineering, and geodesy.

(B) a minimum of 3 semester hours (4.5 quarter hours) of land law. For the purposes of this chapter, land law courses acceptable to the board may include, but are not limited to, the topics of legal principles of surveying, boundary surveying evidence and boundary analysis, and Texas specific laws impacting land surveying. Courses focusing primarily on real estate laws are not acceptable to the board.

(C) a minimum of six semester hours (nine quarter hours) of mathematics. For the purposes of this chapter, mathematics courses acceptable to the board may include, but are not limited to, land surveying math, college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability, statistics, and advanced calculus.

(2) For the purpose of meeting the requirements found in §1071.253(a)(2)(A) or §1071.253(a)(4)(A), the board provides the following definitions:

(A) Civil engineering courses acceptable to the board include, but are not limited to, courses that address the design, construction, and maintenance of the physical and naturally built environment.

(B) Photogrammetry courses acceptable to the board include, but are not limited to, courses that address the science and technology of obtaining reliable information about physical objects and the environment through the process of recording, measuring and interpreting photographic images and patterns of electromagnetic radiant imagery and other phenomena and includes the topic of remote sensing.

(C) Forestry courses acceptable to the board include, but are not limited to, courses that address the science of developing, caring for, or cultivating forests.

(D) Physical science courses acceptable to the board include, but are not limited to, courses that study the non-living world, including physics, geology, physical geography, astronomy, chemistry, and geographic information systems (GIS).

(3) The education provisions found in paragraphs (1) and (2) of this subsection shall apply to any applicant for a surveyor in training registration after January 1, 2026.

(b) Applicants for registration as a registered professional land surveyor shall have graduated from at least one of the educational programs or degree program combinations listed in §1071.254 of the Surveying Act.

(1) For the purpose of meeting the requirements found in §1071.254(a)(3), the courses listed in subparagraphs (A) - (C) of this paragraph must be taken, as part of the qualifying degree or in addition to the bachelor or associate degree program, in order to be eligible for a surveyor-in-training certificate:

(A) a minimum of 9 semester hours (13.5 quarter hours) of land surveying. For the purposes of this chapter, land surveying courses acceptable to the board may include, but are not limited to, the topics of basic surveying, advanced surveying, route surveying, engineering surveying, geospatial engineering, and geodesy.

(B) a minimum of 3 semester hours (4.5 quarter hours) of land law. For the purposes of this chapter, land law courses acceptable to the board may include, but are not limited to, the topics of legal principles of surveying, boundary surveying evidence and boundary analysis, and Texas specific laws impacting land surveying. Courses focusing primarily on real estate laws are not acceptable to the board.

(C) a minimum of six semester hours (nine quarter hours) of mathematics. For the purposes of this chapter, mathematics courses acceptable to the board may include, but are not limited to, land surveying math, college algebra, trigonometry, analytical geometry, differential and integral calculus, linear algebra, numerical analysis, probability, statistics, and advanced calculus.

(2) For the purpose of meeting the requirements found in §1071.254(a)(3), the board provides the following definitions:

(A) Civil engineering courses acceptable to the board include, but are not limited to, courses that address the design, construction, and maintenance of the physical and naturally built environment.

(B) Photogrammetry courses acceptable to the board include, but are not limited to, courses that address the science and technology of obtaining reliable information about physical objects and the environment through the process of recording, measuring and interpreting photographic images and patterns of electromagnetic radiant imagery and other phenomena and includes the topic of remote sensing.

(C) Forestry courses acceptable to the board include, but are not limited to, courses that address the science of developing, caring for, or cultivating forests.

(D) Physical science courses acceptable to the board include, but are not limited to, courses that study the non-living world, including physics, geology, physical geography, astronomy, chemistry, and geographic information systems (GIS).

(3) The education provisions found in paragraphs (1) and (2) of this subsection shall apply to any applicant for a registered professional land surveyor who applied for a surveyor in training registration after January 1, 2026.

(4) If the surveyor in training registration was waived for an applicant from an out-of-state registration holder in accordance with the provisions found in §134.25 of this chapter (relating to Application from Out-of-State Registration Holders), the education provisions found in paragraphs (1) and (2) of this subsection shall apply to any applicant for a registered professional land surveyor received after January 1, 2026.

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 24, 2024.

TRD-202402769

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 440-7723



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER A. RULES OF PRACTICE AND PROCEDURE

DIVISION 1. GENERAL PROCEDURAL PROVISIONS

The Texas Department of Insurance (TDI) proposes the repeal of 28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89; amendments to §1.32; and new §1.47. These sections concern the procedures for responding to notices of hearing, dispositions of contested cases, and appeals of dispositions. The proposed changes modernize and clarify parts of TDI's contested case process.

EXPLANATION. The proposed repeal of §§1.47 - 1.49, 1.51, and 1.52 removes regulations that no longer provide relevant guidance because of repealed or recodified statutes. The proposed repeal of §1.88 and §1.89 removes regulations containing outdated procedures that have been superseded by regulations in 1 TAC Chapter 155. The proposed amendments to §1.32 and proposed new §1.47 update the procedure for (1) informing applicants and license or authorization holders about alleged violations, and (2) informally disposing of contested cases when the applicant or license or authorization holder does not participate in the process. The proposed amendments also make nonsubstantive changes for plain language and to reflect current agency drafting style.

Details of the proposed amended, new, and repealed sections follow.

Section 1.32. The proposed amendments to §1.32 remove unnecessary references, update the process for applicants to request a hearing following a proposed denial of a new or renewal license or authorization, and make plain language changes.

The first sentence in §1.32 is solely a reference to a repealed statute, stating that the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by §18 of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed effective September 1, 1993; those regulations on licenses are now governed by the Administrative Procedures Act (APA), under Government Code §2001.054. The sentence is stricken, as it provides no relevant information or direction, and the APA sufficiently addresses the matter; it is not necessary for §1.32 to interpret or apply it.

In the second sentence, the proposed amendments change "he or she shall have" to "the person will have" and remove the end of the sentence, which states that a hearing will be granted if requested and again refers to Article 6252-13a. The latter amendment does not affect the applicant's right to a hearing; instead, it limits the rule's scope to better accommodate the possibility of a contested case being informally disposed of under any method listed in Government Code §2001.056 before it is docketed at the State Office of Administrative Hearings (SOAH). The amendments aim to limit confusion or conflict between the procedural steps §1.32 regulates and those steps regulated by proposed new §1.47 or other laws. If an applicant requests a hearing, that application will be referred to TDI's Enforcement Section and continue through the contested case process.

Repeal of existing §1.47. Existing §1.47, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.47 states that informal disposition of a contested case is governed by §13(e) of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed effective September 1, 1993; informal disposition of contested cases is now governed by the APA, under Government Code §2001.056. Section 1.47 provides no relevant information or direction. The APA sufficiently addresses the matter; it is not necessary to update §1.47 to interpret or apply it.

Proposed new §1.47. Proposed new §1.47 provides a more efficient process for informal dispositions of contested cases when the person identified in the allegations does not participate. For contested cases involving applications for new or renewal licenses or authorizations, the process in proposed new §1.47 follows the steps in the proposed amendments to §1.32.

The new process in proposed §1.47 is similar to the process in existing §1.88 and §1.89, which are proposed to be repealed. The primary difference is that the informal disposition will occur *before* the contested case is docketed with SOAH instead of after docketing, as required under the existing rules. The proposed title for new §1.47 identifies the notice that will be sent under this section and reflects the change to the timing of the informal disposition. New §1.47 allows for a more modern and efficient process and retains the same level of notice regarding the allegations against the person.

Proposed new §1.47(a) establishes that TDI may send a person a notice of allegations that sets out the factual matters asserted against them, the legal authority under which TDI can act on those matters, any relief sought, and the repercussions of failing to respond to the notice of allegations. The information in the notice of allegations is similar to what is currently included in a petition and a notice of hearing, under §1.88 and Government Code §2001.052, except for the time, place, and nature of the hearing. This information will not be available because the notice of allegations will be sent before the hearing is docketed at SOAH. The notice of allegations will provide a person with an invitation to show compliance with the law and information to make an informed decision about whether they would like to proceed to a public hearing at SOAH.

Under proposed new §1.47(b), a person has 20 days to respond to the notice of allegations—the same response time that is in existing §1.88. The proposed repeal of §1.88 will result in TDI's rules no longer requiring a response to a notice of hearing. There is also no requirement for a response to a notice of hearing in SOAH's rules; see 1 TAC Chapter 155. This proposal shifts the existing requirement that the person respond to TDI's allegations and show a willingness to participate in a hearing from after docketing to before docketing at SOAH. Proposed new §1.47 does not include any requirements or limitations regarding the person's response to the notice of allegations, other than it needs to be in writing.

Under proposed new §1.47(c), if a person does not timely respond to a notice of allegations, then the contested case may be informally disposed of under a default order, as authorized by Government Code §2001.056 and Insurance Code §82.055 or §4005.102. This is the same type of disposition allowed under existing §1.89 for failing to file a response to a notice of hearing. Subsection (c) identifies what will be included in or addressed by a default order issued under the section. A default order under this subsection will describe how the person who is the subject of the order waived their opportunity for a hearing by failing to

respond to a properly sent notice of allegations. The allegations from §1.47(a) will be used as the findings of fact and conclusions of law, and the relief sought in §1.47(a)(4) will be the action ordered by the default order.

New §1.47(d) sets out the process to appeal a default order issued under §1.47. This process is substantially similar to the process in existing §1.89, with some language updates to reflect current agency drafting style and plain language preferences. A party to a contested case may file a motion to set aside the default order and reopen the record. Subsection (d) plainly describes how the motion must be submitted to TDI. Subsections (d)(2) and (d)(3) provide the same standard of review for granting a motion under the subsection and the same explanation that a motion under the subsection is not a motion for rehearing, as stated in existing §1.89. If the party establishes that the failure to respond was not intentional and was a mistake, then the commissioner will grant the motion to set aside the default order. Once a default order under this section is set aside, the party will again have the ability to show compliance or present their case at SOAH.

New §1.47(e) clarifies that the updated process of sending a notice of allegations will constitute the beginning of an action under Insurance Code §81.001.

Repeal of §1.48. Section 1.48, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.48 states that the form and time limits for a final decision of the commissioner, the fire marshal, or the Board of Insurance in a contested case are governed by §15 and §16 of Texas Civil Statutes, Article 6252-13a. Article 6252-13a was repealed effective September 1, 1993; form and time limits for final decisions are now governed by the APA, under Government Code §2001.141 and §2001.143. Section 1.48 provides no relevant information or direction and could confuse a party attempting to appeal a final decision in a contested case. The APA sufficiently addresses the matter; it is not necessary to update §1.48 to interpret or apply it.

Repeal of §1.49. Section 1.49, which consists of a single sentence, is proposed for repeal because it is solely a reference to a repealed statute. Section 1.49 states that the requirements and time limits for a motion for rehearing in a contested case before the commissioner, fire marshal, or the Board of Insurance are governed by §16 of Article 6252-13a. Article 6252-13a was repealed and these regulations are now addressed by the APA, under Government Code §2001.145 and §2001.146. Section 1.49 provides no relevant information or direction and could confuse a party attempting to request a motion for rehearing. The APA sufficiently addresses the matter, so it is not necessary to update §1.49 to interpret or apply it.

Repeal of §1.51. Section 1.51 is proposed for repeal because the section sets out procedures that are inconsistent with current statutes in the Insurance Code and the APA. Section 1.51, which was last amended in 1991, addresses appeals of final agency decisions in contested cases. In 1993, the APA began addressing the judicial review of final agency decisions, under Government Code Chapter 2001, Subchapter G. Subchapter G sufficiently addresses the matter, so it is not necessary to update §1.51 to interpret or apply it.

Subsection (b) provides procedures for appeals of acts, rulings, or decisions of the Texas Workers' Compensation Assigned Risk Pool, the Texas Catastrophe Property Insurance Association, or the Texas Medical Liability Underwriting Association. These pro-

cedures have been superseded by law. Section 1.51 provides outdated information and directions, and it could confuse a party attempting to appeal a final agency decision.

Repeal of §1.52. The proposed repeal of §1.52 is because the section, which consists of a single sentence, is solely a reference to a repealed statute. Section 1.52 states that the time periods for §1.48 and §1.49, which are both proposed for repeal, may be modified as provided by §16 of Article 6252-13a. Article 6252-13a was repealed and the regulations are now addressed in the APA, as stated above. Section 1.52 provides no relevant information or direction and could confuse a party attempting to modify time periods. The APA sufficiently addresses the matter, so it is not necessary to update §1.52 to interpret or apply it.

Repeal of §1.88. Section 1.88 is proposed for repeal because it will be unnecessary if the other proposed repeals and amendments are adopted. The provisions in §1.88 relate to §1.89, which is proposed for repeal. Section 1.88 includes outdated references and provisions that are sufficiently addressed under the APA and 1 TAC Chapter 155. The requirement in proposed new §1.47 to respond to a notice of allegations supplants the requirement in §1.88 to respond to a notice of hearing.

Repeal of §1.89. Section 1.89 is proposed for repeal because it will be unnecessary if the other proposed repeals and amendments are adopted. Some provisions in §1.89 concerning contested case hearings have been superseded by SOAH procedures included in 1 TAC §155.501 and §155.509, while other provisions provide an informal disposition process that will be supplanted by proposed new §1.47.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner Leah Gillum, Fraud and Enforcement Division, has determined that during each year of the first five years this proposal is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections as proposed, other than that imposed by statute. Ms. Gillum made this determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments, new section, and repeals.

Ms. Gillum does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years this proposal is in effect, Ms. Gillum expects that administering the sections as proposed will have the public benefit of ensuring sufficient due process protections through a more efficient and clearly written process. The amendments and repeals will remove outdated sections that might confuse or provide incorrect information to a person attempting to follow the contested case process.

Ms. Gillum expects that this proposal will not increase the cost of compliance for stakeholders because they do not require substantive changes from the current process.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that this proposal will not have an adverse economic effect on small or micro businesses, or on rural communities. While the new and repealed sections will apply to small or micro businesses, the updated process is substantially similar to the existing process and does not require additional or significantly different actions by small or micro businesses. As a result, and in accordance with Gov-

ernment Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Any cost associated with responding to TDI under new §1.47 will be the same as is present under current §1.89. Neither the proposed amendments to §1.32 nor the proposed repeals of §§1.47 - 1.49, 1.51, 1.52, 1.88, or 1.89 result in additional costs on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed are in effect, the rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

This proposal repeals existing regulations and replaces them with new regulations addressing the need to file a written response to TDI's allegations in a contested case.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 5, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on August 5, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

28 TAC §1.32, §1.47

STATUTORY AUTHORITY. TDI proposes amendments to §1.32 and new §1.47 under Government Code §2001.004 and §2001.056, and Insurance Code §§82.055, 4005.102, and 36.001.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by consent order, agreed settlement, stipulation, or default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §1.32 and new §1.47 implement Government Code §2001.004 and §2001.056, and Insurance Code §82.055 and §4005.102.

§1.32. *Licenses.*

[Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license is governed by the Act, §18.] Except as otherwise provided by law, if an applicant's original application or request for renewal of a license or certificate of authority is denied, the person will [he or she shall] have 30 days from the date of denial to make a written request for a hearing. [and, if so requested, the hearing will be granted and the provisions of the Act and these sections with regard to a contested case shall apply.]

§1.47. *Informal Disposition After Notice of Allegations.*

(a) Before docketing a contested case with the State Office of Administrative Hearings, the Texas Department of Insurance (TDI) may send a person a notice of allegations via certified mail to the person's last known mailing address that includes:

- (1) a short, plain statement of the factual matters asserted;
 - (2) the legal authority and jurisdiction under which TDI or the commissioner is authorized to act;
 - (3) the statutes and rules involved;
 - (4) any relief sought, including denial, revocation, or other disciplinary action;
 - (5) an invitation to show compliance with the law;
 - (6) statements that notify the person that:
 - (A) the person has a right to a hearing;
 - (B) the person must respond to the notice in writing not later than the 20th day after the date it was mailed; and
 - (C) if the person does not respond, then the commissioner may issue a default order that admits all allegations asserted as true and orders the relief recommended in the notice.
- (b) Not later than the 20th day after the date a notice of allegations is mailed, the person must send a written response to TDI as directed in the notice.
- (c) If the person does not send a written response by the deadline described in subsection (b) of this section, the commissioner may

informally dispose of the contested case by issuing a default order. A default order under this section will:

- (1) find that a notice of allegations was properly sent to the person;
- (2) find that the person received and waived an opportunity for hearing;
- (3) deem all allegations in the notice of allegations as true;
- (4) find that the person failed to show compliance with the law; and
- (5) order the relief listed in the notice of allegations.

(d) A party in the contested case may file a motion with TDI to set aside a default order entered under this section and reopen the record.

(1) A party must file the motion with TDI's Chief Clerk's Office and send a copy of it to the TDI attorney named in the notice of allegations before the order becomes final under Government Code Chapter 2001, Subchapter F, concerning Contested Cases: Final Decisions and Orders; Motions for Rehearing.

(2) The commissioner will grant a motion under this subsection if the requesting party establishes that the failure to file a written response to the notice of allegations was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

(3) A motion under this subsection is not a motion for rehearing and is not a substitute for a motion for rehearing. The filing of a motion under this subsection has no effect on either the statutory deadline for the requesting party to file a motion for rehearing or for the commissioner to rule on it, as provided under Government Code Chapter 2001, Subchapter F.

(e) Sending a notice of allegations under this section begins an action under Insurance Code §81.001, concerning Limitations Period for Certain Disciplinary Actions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2024.
TRD-202402707
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 676-6555



28 TAC §§1.47 - 1.49, 1.51, 1.52, 1.88, 1.89

STATUTORY AUTHORITY. TDI proposes the repeal of §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89 under Government Code §2001.004 and §2001.056, and Insurance Code §§82.055, 4005.102, and 36.001.

Government Code §2001.004 provides for a state agency's adoption of rules stating the nature and requirements for formal and informal procedures.

Government Code §2001.056 provides that informal disposition of a contested case may be made by default.

Insurance Code §82.055 provides that the commissioner may informally dispose of a matter under Insurance Code Chapter 82, Subchapter B, by consent order, agreed settlement, stipulation, or default.

Insurance Code §4005.102 lists remedies for violations of the Insurance Code, other insurance laws of Texas, and commissioner rules. This list includes a denial or disciplinary action against an applicant or a regulated person. The section also states that the remedies under the section are in addition to any remedy available under Insurance Code Chapter 82, which includes informal disposition by default.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §§1.47 - 1.49, 1.51, 1.52, 1.88, and 1.89 implements Government Code §2001.004 and §2001.056 and Insurance Code §82.055 and §4005.102.

§1.47. Informal Disposition of a Contested Case.

§1.48. Final Decisions.

§1.49. Motion for Rehearing.

§1.51. Appeals to the Board of Acts, Rulings, or Decisions of Certain Persons, Associations, Organizations, or Other Entities.

§1.52. Modification to Time Periods.

§1.88. Written Response to Notice of Hearing.

§1.89. Default: What Constitutes Default; Remedies.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 20, 2024.
TRD-202402706
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 676-6555



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 255. RULEMAKING PROCEDURES
37 TAC §255.6

The Texas Commission on Jail Standards proposes an amendment, with new subsection (c) added to Texas Administrative Code, Title 37, §255.6, relating specifically to the creation and operation of an advisory committee on intellectual or developmental disability as required by Government Code, Title 4, §511.022.

Brandon Wood, Executive Director, has determined that, during the first five years the amendment will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the amended sections as proposed.

TCJS has determined that during the first five years that the section will be in effect:

- (1) the proposed amendment will not create or eliminate a government program.
- (2) implementation of the proposed amendment will not affect the number of employee positions;
- (3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations;
- (4) The proposed amendment will not affect fees paid to the agency;
- (5) the proposed amendment will not create a new rule;
- (6) the proposed amendment will not repeal an existing rule;
- (7) the proposed amendment will not change the number of individuals subject to the rule; and
- (8) TCJS has insufficient information to determine the proposed rules' effect on the state's economy.

Mr. Wood has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the amended rules, as they will not be required to alter their business practices and the rules do not impose any additional costs on those required to comply with the rules.

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Texas Government Code, §2001.0045 does not apply to this proposal because the rules do not impose a cost on regulated persons; are amended to reduce the burden or responsibilities imposed on regulated persons by the rule.

Mr. Wood has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The Commission anticipates that the amendment will enable the counties that are capable of operating a direct supervision housing facility without the burden of applying for a variance from the minimum jail standards.

TCJS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Comments on the proposed rule may be submitted in writing to Richard Morgan, P.O. Box 12985, Austin, Texas 78711, Fax (512) 463-3185, or e-mail at richard.morgan@tcjs.state.tx.us.

The amendment is proposed under the authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails, as well as advisory committees.

This proposed change does not affect other rules or statutes.

§255.6. *Advisory Committees.*

(a) General. The Texas Commission on Jail Standards (Commission) may establish advisory committees pursuant to Gov't. Code §511.0081 or if mandated by legislative action.

(1) Purpose, Role, and Responsibility. The purpose, role, and responsibility of a Commission advisory committee is to make recommendations to the Commission on programs, rules, and policies administered by the Commission.

(2) Goals. Unless mandated by legislative action, the goal of each advisory committee will be determined by the Commission at the time the advisory committee is created.

(3) Duration. Unless mandated by legislative action, the duration of each advisory committee will be determined by the Commission. The Commission will annually review and determine the continuing need for an advisory committee established by the Commission.

(4) Committee Members.

(A) Committees will consist of a minimum of five members and a maximum of nine members, unless mandated otherwise by legislative action.

(B) Unless otherwise mandated by legislative action, committee members will have various backgrounds of experience, expertise, and interest in the matters the committee will address. Committee members may include Commission commissioners, sheriffs, jail administrators, relevant governmental agency representatives, relevant professionals, and other interested members of the public. The Chair of the advisory committee, in consultation with the Executive Director, will appoint committee members that meet the criteria set forth.

(C) The Chair of the Texas Commission on Jail Standards appoints the Chair of advisory committees unless mandated otherwise by legislative action.

(D) Members of advisory committees will elect an advisory committee Vice-Chair from among its members to serve in the temporary absence of the advisory committee Chair.

(E) Terms. The Commission Executive Director will determine the members' terms of service. The terms of service will be staggered.

(F) Unless prohibited by legislative action, non-voting subject matter experts may be named to the committee at the discretion of the Chair with the consent of the committee.

(5) Rules. Each advisory committee established shall adopt policies and procedures that address the purpose of the advisory committee, membership qualifications, training requirements, terms of service, operating procedures, conflict of interest, and adherence to the requirements set forth in Texas Government Code 551.

(6) Committee Operations and Meetings.

(A) Meetings. The committee must meet at least quarterly; however, the Chair may decide that it is necessary to meet more frequently. The committee is subject to the Texas Open Meetings Act, Texas Government Code Chapter 551.

(B) Quorum. A majority of members constitutes a quorum.

(C) Compensation and Travel Reimbursement. Members will not be reimbursed for expenses related to their participation in the advisory committee.

(b) Administrative Rules Advisory Committee. The Commission establishes an Administrative Rules Advisory Committee to regularly review all administrative rules as part of the mandated rule review

process, administrative rules required by new legislation, administrative rules as recommended by the Commission, and petitions for administrative rule changes. The committee makes recommendations to the Commission related to administrative rules. The Committee consists of a minimum of nine members as follows:

- (1) one representative of the Commission to act as Committee Chair;
- (2) one sheriff of a county with a population of [from] 80,000 or more;
- (3) one sheriff of a county with a population of [from] less than 80,000;
- (4) one county judge or county commissioner from a county with a population of 80,000 or more;
- (5) one county judge or county commissioner from a county with a population of less than 80,000;
- (6) one member of the public who is a representative of a statewide organization that advocates for individuals or issues related to county jails; ~~[(7) one member of the public];~~
- (7) one non-voting ex-officio jail administrator from a jail consisting of 50 beds or fewer [less];
- (8) one non-voting ex-officio jail administrator from a jail consisting of 51-999 beds; and
- (9) one non-voting ex-officio jail administrator from a jail consisting of 1000 or more beds.

(c) Intellectual or Developmental Disability Advisory Committee. As required by Government Code 511.022, the commission establishes an Intellectual or Developmental Disability Advisory Committee to advise the commission and make recommendations on matters related to the confinement in county jail of persons with intellectual or developmental disabilities. The Committee consists of a minimum of thirteen members as follows:

- (1) one representative of the commission;
- (2) one representative of the Department of State Health Services;
- (3) one representative of the Health and Human Services Commission with expertise in intellectual and developmental disabilities;
- (4) one representative of the Texas Commission on Law Enforcement;
- (5) one representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;
- (6) one sheriff of a county with a population of 80,000 or more;
- (7) one sheriff of a county with a population of less than 80,000;
- (8) two representatives of statewide organizations that advocate for individuals with intellectual and developmental disabilities;
- (9) one representative who is a mental health professional with a focus on trauma and intellectual and developmental disabilities;
- (10) one representative from a state supported living center;
- (11) one member who has an intellectual or developmental disability or whose family member has an intellectual or developmental disability; and

(12) one member who represents the public.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 21, 2024.

TRD-202402740

Brandon Wood

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 850-8668



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 804. JOBS AND EDUCATION FOR TEXANS (JET) GRANT PROGRAM

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 804, relating to the Jobs and Education for Texans (JET) Grant Program:

Subchapter A. Definitions, §804.1

Subchapter B. Advisory Board Composition, Meeting Guidelines, §804.12 and §804.13

Subchapter C. Grant Program, §§804.21, 804.22, and 804.24

Subchapter D. Grants to Educational Institutions for Career and Technical Education Programs, §804.41

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 804 rule change is to ensure that this chapter aligns with terminology used in Texas Education Code, Chapter 134 and reflects updated program practices.

Texas Government Code §2001.039 requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 804, Jobs and Education for Texans (JET) Grant Program, and proposes readoption of the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. DEFINITIONS

TWC proposes the following amendments to Subchapter A:

§804.1. Definitions

Section 804.1(5) is amended to change "Charter school" to "Open-enrollment charter school" to align with the terminology in Texas Education Code, Chapter 134. The paragraph is moved to retain alphabetical order and affected paragraphs are renumbered accordingly.

SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

TWC proposes the following amendments to Subchapter B:

§804.12. Meetings Required

Section 804.12(a) is amended to change "charter school" to "open-enrollment charter school" to align with the terminology in Texas Education Code, Chapter 134.

§804.13. General Advisory Board Responsibilities

Section 804.13(1) is amended to change "charter schools" to "open-enrollment charter schools" to align with the terminology in Texas Education Code, Chapter 134.

SUBCHAPTER C. GRANT PROGRAM

TWC proposes the following amendments to Subchapter C:

§804.21. General Statement of Purpose

Section 804.21 is amended to change "charter schools" to "open-enrollment charter schools" to align with the terminology in Texas Education Code, Chapter 134.

§804.22. Notice of Grant Availability and Application

Section 804.22 is amended to change the section name from "Notice of Grant Availability and Application" to "Grant Availability and Application."

Section 804.22 is amended to replace "Notice of Availability" with "request for applications" and remove the sentence, "The notice shall be published in the Texas Register and on the Agency's website." These changes more closely align the rule with statute and current program practices.

§804.24. Reporting Requirements

Section 804.24 is amended to change "charter schools" to "open-enrollment charter schools" to align with the terminology in Texas Education Code, Chapter 134.

SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

TWC proposes the following amendments to Subchapter D:

§804.41. Grants for Career and Technical Education Programs

Section 804.41 has been amended to change "charter schools" to "open-enrollment charter schools" to better align with statute.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to ensure that the terminology used in 40 Texas Administrative Code (TAC), Chapter 804, aligns with the terminology used in Texas Education Code, Chapter 134, and reflects updated program practices.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

- will not create or eliminate a government program;
- will not require the creation or elimination of employee positions;
- will not require an increase or decrease in future legislative appropriations to TWC;
- will not require an increase or decrease in fees paid to TWC;
- will not create a new regulation;
- will not expand, limit, or eliminate an existing regulation;
- will not change the number of individuals subject to the rules; and
- will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the

proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to add clarity to the program eligibility and processes.

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

PART IV. COORDINATION ACTIVITIES

This rulemaking makes clarifying changes to better align the terminology used in 40 TAC Chapter 804 with the terminology used in Texas Education Code, Chapter 134, and reflects updated program practices. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than August 5, 2024.

SUBCHAPTER A. DEFINITIONS

40 TAC §804.1

PART VI.

STATUTORY AUTHORITY

The rule is proposed under:

--Title 3, Texas Education Code, §134.008, which provides TWC with the specific authority to establish rules for the administration of the JET Grant Program; and

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 3, Texas Education Code, particularly Chapter 134.

§804.1. Definitions.

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

(1) Act--Texas Education Code, Chapter 134, Jobs and Education for Texans Grant Program.

(2) Advisory board--The advisory board of education and workforce stakeholders created pursuant to the Act.

(3) Career and technical education--Organized educational activities that offer a sequence of courses that:

(A) provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in high-demand occupations or emerging industries;

(B) includes competency-based applied learning that contributes to the academic knowledge, problem-solving skills, work

attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual; or

(C) provides a license, a certificate, or a postsecondary degree.

(4) Certificate or degree completion--Any grouping of workforce or technical courses in sequential order that, when satisfactorily completed by a student, will entitle the student to a Texas Higher Education Coordinating Board--approved certificate or associate degree from a public technical institute, public junior college, or public state college.

~~[(5) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted pursuant to Texas Education Code, §12.101.]~~

~~(5) [(6)] Developmental education--Structured courses, tutorials, laboratories, or other proven instructional efforts that successfully prepare students for college level (and therefore work-ready) courses as measured by passing the state-required college entrance exam (or meeting the Texas Success Initiative requirements).~~

~~(6) [(7)] Emerging industry--A growing, evolving, or developing industry based on new technological products or concepts.~~

~~(7) [(8)] High-demand occupation--A job, profession, skill, or trade for which employers within the state of Texas generally, or within particular regions or cities of the state, have or will have a substantial need. In determining whether there is or will be a substantial need for a particular job, profession, trade, or skill, the Agency may consider occupations identified by the 28 Local Workforce Development Boards (Board-Area Target Occupations Lists) and/or the Agency's labor market projections.~~

~~(8) [(9)] JET--The Jobs and Education for Texans Grant Program.~~

~~(9) Open-enrollment charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted pursuant to Texas Education Code §12.101.~~

~~[(10) Notice of Availability or NOA--The notice of availability that is published by the Agency pursuant to §804.22 of this title (relating to Notice of Grant Availability and Application).]~~

~~(10) [(11)] Public junior college--Any junior college certified by the Texas Higher Education Coordinating Board in accordance with Texas Education Code[;] §61.003.~~

~~(11) [(12)] Public state college--Lamar State College--Orange, Lamar State College--Port Arthur, or Lamar Institute of Technology, in accordance with Texas Education Code[;] §61.003.~~

~~(12) [(13)] Public technical institute--The Lamar Institute of Technology or the Texas State Technical College System, in accordance with Texas Education Code[;] §61.003.~~

~~(13) [(14)] School district--An independent school district or the Windham School District.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2024.
TRD-202402667

Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 850-8356



SUBCHAPTER B. ADVISORY BOARD COMPOSITION, MEETING GUIDELINES

40 TAC §804.12, §804.13

The rules are proposed under:

--Title 3, Texas Education Code, §134.008, which provides TWC with the specific authority to establish rules for the administration of the JET Grant Program; and

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 3, Texas Education Code, particularly Chapter 134.

§804.12. Meetings Required.

(a) The advisory board is required to meet at least once each quarter, or as needed, to review received applications and recommend awarding grants under this chapter to public junior colleges, public technical institutes, public state colleges, open-enrollment charter schools, and school districts.

(b) Meetings shall be subject to the requirements of the Open Meetings Act.

§804.13. General Advisory Board Responsibilities.

The advisory board shall provide advice and recommend [~~recommendations to the Agency on~~]:

(1) the manner in which public junior colleges, public technical institutes, public state colleges, open-enrollment charter schools, and school districts apply for JET grants; and

(2) the JET grants to be awarded by the Agency.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2024.

TRD-202402668
Les Trobman
General Counsel
Texas Workforce Commission

Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 850-8356



SUBCHAPTER C. GRANT PROGRAM

40 TAC §§804.21, 804.22, 804.24

The rules are proposed under:

--Title 3, Texas Education Code, §134.008, which provides TWC with the specific authority to establish rules for the administration of the JET Grant Program; and

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 3, Texas Education Code, particularly Chapter 134.

§804.21. General Statement of Purpose.

In accordance with the Act, the Agency established JET, which it administers [~~shall be administered~~] pursuant to the Act and this chapter to award grants from the JET fund for the development of career and technical education programs at public junior colleges, public technical institutes, public state colleges, open-enrollment charter schools, and school districts that meet the requirements of Texas Education Code[~~s~~] §134.006 and §134.007.

§804.22. [~~Notice of~~] Grant Availability and Application.

(a) From time to time, the Agency may publish a request for applications for [~~Notice of Availability (NOA) of~~] grant funds under this chapter and post a link to the request for applications on the Agency's website. [~~The notice shall be published in the Texas Register and on the Agency's website.~~] In addition to the respective purpose for the [~~each~~] grant program [~~under this chapter~~], the request for applications [~~notice~~] may include:

- (1) the total grant funds available for award;
- (2) the minimum and maximum amount of grant funds available for each grant recipient;
- (3) eligibility criteria;
- (4) application requirements;
- (5) grant award and evaluation criteria;
- (6) any grant requirements in addition to those set forth in this chapter;
- (7) the date by which the application must be submitted to the Agency;
- (8) the anticipated date of grant awards; and
- (9) any other information or instructions necessary and appropriate for awarding the grant as determined by the Agency.

(b) To be eligible for a grant award, an applicant meeting the eligibility criteria identified in the request for applications [~~NOA~~] shall submit an application in the form and manner [~~as~~] prescribed by the Agency [~~in NOA~~].

(c) The Agency may request additional information at any time prior to the grant award in order to effectively evaluate any application.

§804.24. Reporting Requirements.

A public junior college, public technical institute, public state college, open-enrollment charter school, or school district receiving a grant under this chapter must comply with all reporting requirements of the contract in the frequency and format determined by the Agency in order to maintain eligibility for grant payments. Failure to comply with the reporting requirements may result in termination of the grant award and the entity being ineligible for future grants under this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2024.

TRD-202402669
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: August 4, 2024
For further information, please call: (512) 850-8356



SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

40 TAC §804.41

The rule is proposed under:

--Title 3, Texas Education Code, §134.008, which provides TWC with the specific authority to establish rules for the administration of the JET Grant Program; and

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Title 3, Texas Education Code, particularly Chapter 134.

§804.41. Grants for Career and Technical Education Programs.

(a) This subchapter is applicable to JET awards to public junior colleges, public technical institutes, public state colleges, open-enrollment charter schools, and school districts for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007.

(b) A grant received under this subchapter may be used only to:

(1) [tø] support courses or programs that prepare students for career employment in occupations that are identified by local businesses as being in high demand;

(2) [tø] finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and

(3) [tø] finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree.

(c) In awarding a grant under this subchapter, the Agency shall primarily consider the potential economic returns to the state from the

development of the career and technical education course or program. The Agency may also consider whether the course or program:

(1) is part of a new, emerging industry or high-demand occupation;

(2) offers new or expanded dual-credit career and technical educational opportunities in public high schools;

(3) offers new career and technical educational opportunities not previously available to students enrolled at any campus in the Windham School District; or

(4) is provided in cooperation with other public junior colleges, public technical institutes, or public state colleges across existing service areas.

(d) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the grant recipient, including industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

(B) equipment, equipment use, materials, or supplies;

(C) personnel or curriculum development cost; and/or

(D) administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the Agency.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 18, 2024.

TRD-202402670

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: August 4, 2024

For further information, please call: (512) 850-8356

