

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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes amendments to Texas Ethics Commission Rules in Chapter 6.

Specifically, the TEC proposes amendments to rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.1 regarding Definitions, and §6.9 regarding Computation of Time.

The TEC also proposes amendments to rules in Subchapter B of Chapter 6 (relating to Officers and Employees of the Commission), including §6.21 regarding Officers of the Commission, and §6.23 regarding Commission Staff.

The TEC also proposes amendments to rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.35 regarding Called Meetings, §6.39 regarding Meeting Agenda, §6.43 regarding Speakers Addressing the Commission, §6.45 regarding Order and Conduct of Commission Meeting and §6.47 regarding Tape Recording of Meeting; Minutes.

This proposal, along with the contemporaneous proposal of the repeal of certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amended rules.

The General Counsel has also determined that for each year of the first five years the proposed amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be

an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed amended rules.

The General Counsel has determined that during the first five years that the proposed amended rules are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed amended rules may do so at any Commission meeting during the agenda item relating to the proposed amended rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.1, §6.9

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code

§6.1. Definitions.

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

(1) Act--The Government Code, Chapter 571 (concerning Texas Ethics Commission).

(2) Administrative Procedure Act--The Government Code, Chapter 2001 (concerning Administrative Procedure).

(3) Agency--The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.

(4) Commission--The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a and in the Government Code, Chapter 571.

(5) Document--A report, complaint, response, letter, or any other written material.

(6) Executive director--The person employed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.

~~(7) Family member or relative--An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (concerning Relationships by Consanguinity or by Affinity).;~~

(7) [(8)] Filer--A person required to file a report with the commission or a local filing authority in accordance with a law enforced by the commission [this title].

(8) [(9)] Individual--A human being who has been born and is alive.

(9) [(10)] Local filing authority--A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with a law enforced by the commission [this title, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority)].

(10) [(11)] Open Meetings Law--The Government Code, Chapter 551 (concerning Open Meetings).

(11) [(12)] Open Records Law--The Government Code, Chapter 552 (concerning Open Records).

(12) [(13)] Person--An individual, representative, corporation, association, or other entity, including any nonprofit corporation, or any agency or instrumentality of federal, state, or local government.

(13) [(14)] Postmark--A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

~~(15) Presiding officer--The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).;~~

(14) [(16)] Report--Any document or other information required to be filed under this title.

(15) [(17)] Staff--Employees of the commission, hired by the commission or the executive director.

(16) [(18)] Title 15--The Election Code, Title 15 (concerning Regulating Political Funds and Campaigns).

~~(19) First responder--An individual who is:;~~

~~((A) a peace officer whose duties include responding rapidly to an emergency;;~~

~~((B) fire protection personnel, as that term is defined by Section 419.021, Government Code;;~~

~~((C) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision;;~~

~~((D) an ambulance driver; or;~~

~~((E) an individual certified as emergency medical services personnel by the Department of State Health Services.;~~

~~((20) Judicial office--The office of:;~~

~~((A) chief justice or justice, supreme court;;~~

~~((B) presiding judge or judge, court of criminal appeals;;~~

~~((C) chief justice or justice, court of appeals;;~~

~~((D) district judge;;~~

~~((E) judge, statutory county court; or;~~

~~((F) judge, statutory probate court.;~~

~~((21) Non-judicial office--An elective public office and the secretary of state, but not including an office described by paragraph (20) of this section.;~~

§6.9. Computation of Time.

(a) This section states how to compute a period of time prescribed or allowed by this Part [title], by any order of the agency, or by any applicable statute. The day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period is included. However, if the last day of the time period would not be a business day as defined by Section 552.0031 of the Texas Government Code [Saturday, a Sunday, or a legal holiday], the period is extended until the next day that is [not] a business day. [Saturday, a Sunday, or a legal holiday. A legal holiday, for purposes of this section, is any day other than a Saturday or Sunday that the agency is closed for a holiday established by state law.]

(b) A time period described by statute or this Part [title] to be a certain number of business days is calculated under subsection (a) of this section without including any day [Saturday, Sunday, or legal holiday] within that time period that is not a business day as defined by Section 552.0031 of the Texas Government Code.

(c) A document required to be filed or served by a deadline established by statute or this Part [title] is filed or served when it is actually received. A document may be deemed to be filed or served when it is deposited with the United States Postal Service, properly addressed to the recipient, with all postage prepaid. The date of the postmark on the envelope for the document is presumed to be the date the document was deposited with the United States Postal Service.

(d) A document filed or served by delivery to the United States Postal Service is presumed to have been filed before 5:00 p.m. on the date indicated by the postmark.

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

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James Tinley

General Counsel

Texas Ethics Commission

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SUBCHAPTER B. OFFICERS AND EMPLOYEES OF THE COMMISSION

1 TAC §6.21, §6.23

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

§6.21. *Officers of the Commission.*

~~[(a) The commission shall select a presiding officer and a vice-presiding officer.]~~

~~(a) [(b)] The commission's [Commission] chair and vice chair shall be [officers are] elected annually by majority vote of the commission. The election shall take place at the first commission meeting held after June 1 of each year. Each officer shall serve until his or her successor is selected.~~

~~(b) [(e)] The chair [presiding officer] and vice chair [the vice-presiding officer] shall be members of [elected from] different political parties [party caucus lists].~~

~~(c) [(d)] The chair and vice chair [presiding officer] may be re-elected; however, if a new chair [presiding officer] is elected he or she [it] should be a member of [from] a different political party [caucus list] than the former chair [presiding officer].~~

~~(d) [(e)] The person elected to serve as the commission's chair shall also serve as the commission's presiding officer. The presiding officer shall preside at all meetings of the commission. While presiding, the presiding officer shall direct the order of the meeting, appoint committees and persons to chair committees, recognize persons to be heard at hearings, set reasonable and necessary time limits for speakers, and take other actions to clarify issues and preserve order. Unless the chair appoints a presiding officer pro tem pursuant to subsection (f) of this section, [When the presiding officer is absent,] the vice chair [vice-presiding officer] shall perform all duties of the presiding officer when the chair is absent.~~

~~(e) [(f)] In addition to other powers identified elsewhere in this Part, the [The] presiding officer may perform the following actions of the commission:~~

~~(1) Sign previously approved subpoenas and orders;~~

~~(2) Schedule hearings and meetings; and~~

~~(3) Timely respond to [litigation] matters on behalf of the commission, including litigation matters, when action is required before the next scheduled meeting [and is within the scope of the authorization granted by the commission; and,]~~

~~[(4) Respond to matters on behalf of the commission when action is required and is within the scope of the authorization granted by the commission.]~~

~~(f) [(g)] The chair [presiding officer] may appoint a commissioner as presiding officer [chair] pro tem to preside over a hearing held by the commission.~~

~~(g) If the chair or vice chair is unable to participate in a matter pending before the commission, either may select a replacement from among the other commissioners to exercise their authority and fulfill their duties under this Part and any other applicable law.~~

§6.23. *Commission Staff.*

~~(a) The executive director is the chief administrative officer of the agency. The executive director shall attend commission meetings at the pleasure of the commission and serve as liaison between the commission and the public.~~

~~(b) The commission delegates to the executive director all powers conferred on the commission by the Act or other law, except for any power that requires a vote of the commission or approval of the chair. Any action taken by the executive director shall conform with all applicable law, including this Part [title] and other policies that may be adopted from time to time by the commission.~~

~~(c) The executive director shall attend commission meetings unless specifically excused by the commission and shall perform any duties or assignments established by the commission.~~

~~(d) The general counsel shall attend commission meetings unless specifically excused by the commission, shall provide legal advice to the commission and executive director, and shall perform any duties delegated by the executive director.~~

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

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Texas Ethics Commission

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SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §§6.35, 6.39, 6.43, 6.45, 6.47

The amended rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed amended rules affect Subchapter E of Chapter 571 of the Government Code.

§6.35. *Called Meetings.*

The executive director shall give notice to each commissioner of the date and time of each meeting. Notice under this section shall be provided a reasonable amount of time in advance of the meeting[; and may be by telephone, fax, or mail].

§6.39. *Meeting Agenda.*

(a) The agenda shall consist of agenda items proposed by the executive director prior to the meetings for which the agenda is specified. At a reasonable time before filing a copy of the agenda as required by the Open Meetings Law, the executive director shall provide a copy of the proposed agenda to the presiding officer. If the presiding officer is not reasonably available, the executive director shall [provide a copy of the proposed agenda to the vice-presiding officer. If the vice-presiding officer is not reasonably available, the executive director shall] provide a copy of the proposed agenda to any two commissioners.

(b) The presiding officer, a commission member with the consent of the presiding officer, or any two commissioners may direct the executive director to include an item on the agenda if it complies with the posting requirements specified by law. The presiding officer may direct the executive director to remove an item included on a proposed agenda unless that item is requested by two commission members other than the presiding officer.

(c) A member of the public may ask the executive director to place an item on a proposed agenda. The executive director shall advise

the commission of the request and may include the item on a proposed agenda.

§6.43. *Speakers Addressing the Commission.*

(a) The executive director shall prescribe a speaker registration form. Each person who wishes to speak at a commission meeting shall provide the following information:

- (1) the speaker's name;
- (2) the person or entity the speaker represents, if any;
- (3) the agenda item the speaker wishes to address; and
- (4) his or her mailing address and telephone number.

(b) Any person who addresses the commission shall state his or her name and the name of the person or entity the speaker represents, if any, for purposes of the [tape] recording under §6.47 of this title (relating to [Tape] Recording of Meeting; Minutes).

§6.45. *Order and Conduct of Commission Meeting.*

(a) The presiding officer shall preside at all meetings of the commission. The presiding officer shall direct the order of the meeting in accordance with its agenda, recognize persons to be heard, set reasonable and necessary time limits for speakers, maintain and enforce appropriate standards of conduct, and take any other action necessary in his or her discretion to clarify issues and preserve order. [~~When the presiding officer is absent, the vice-presiding officer shall perform all duties under this subsection.~~]

(b) Commission meetings shall be conducted in accordance with rules and procedures set forth in the most recently published edition of Robert's Rules of Order.

(c) With unanimous consent of all commissioners present, any provision or requirement of this section may be waived.

(d) No action of the commission that otherwise complies with law shall be void or invalid because the action was taken in violation of a rule or procedure established by this section.

§6.47. *[Tape] Recording of Meeting; Minutes.*

(a) All meetings of the commission shall be [tape] recorded. The [tape] recording shall be the official record of actions taken at the meeting.

(b) The presiding officer shall announce the names of each commissioner who makes or seconds a motion to be voted upon by the commission. After the vote has been taken, the presiding officer shall announce the vote in a manner that identifies how each commissioner voted, if a commissioner abstained, or if a commissioner was not present for the vote.

(c) The executive director shall prepare minutes after each meeting that reflect all commission votes and other actions taken during the meeting. The minutes shall be approved by vote of the commission at a subsequent commission meeting.

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

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James Tinley

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For further information, please call: (512) 463-5800

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CHAPTER 6. ORGANIZATION AND ADMINISTRATION

The Texas Ethics Commission (the TEC) proposes the repeal of Texas Ethics Commission rules in Chapter 6.

Specifically, the TEC proposes the repeal of rules in Subchapter A of Chapter 6 (relating to General Rules), including §6.5 regarding Authority to Adopt Rules, and §6.7 regarding Actions That Require Six Votes.

The TEC also proposes the repeal of rules in Subchapter C of Chapter 6 (relating to Commission Meetings), including §6.31 regarding Quorum, and §6.33 regarding Frequency of Meetings.

This proposal, along with the contemporaneous proposal of amendments to certain other rules in Chapter 6, amends the rules used in the organization and administration of the TEC.

State law requires state agencies to "review and consider for readoption each of its rules...not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding its organization and administration, which are codified in Chapter 6. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on the TEC's organization and administration.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the Commission's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the proposed repealed rules. Information concerning the date,

time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

SUBCHAPTER A. GENERAL RULES

1 TAC §6.5, §6.7

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.5. *Authority to Adopt Rules.*

§6.7. *Actions That Require Six Votes.*

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 July 23, 2024.

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James Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



SUBCHAPTER C. COMMISSION MEETINGS

1 TAC §6.31, §6.33

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Chapter 571 of the Government Code.

§6.31. *Quorum.*

§6.33. *Frequency of Meetings.*

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 July 23, 2024.

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James Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes new Chapter 12 in TEC Rules, regarding Sworn Complaints.

Specifically, the TEC proposes new rules in Subchapter A of Chapter 12 (relating to Respondent's Rights), including §12.1

regarding Notice, §12.2 regarding Representation by Counsel, §12.3 regarding *Ex Parte* Communications and §12.4 regarding Agreements to be in Writing.

The TEC also proposes new rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of Complaint), including §12.11 regarding Deadline for Filing a Complaint, §12.12 regarding File Date for a Complaint, §12.13 regarding Description of Violation, §12.14 regarding Statement of Facts and §12.15 regarding Commission Initiated Complaint.

The TEC also proposes new rules in Subchapter C of Chapter 12 (relating to Investigation and Discovery), including §12.21 regarding Response to Notice of Complaint, §12.22 regarding Written Questions, §12.23 regarding Production of Documents During Preliminary Review, §12.24 regarding Proposed Settlement Before Preliminary Review Hearing, §12.25 regarding Subpoenas Issued by Commission, and §12.26 regarding Subpoenas Issued by Counsel for the Respondent.

The TEC also proposes new rules in Division 1 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: General Rules), including §12.31 regarding Purpose and Effect of Motions, §12.32 regarding Required Form of Motions, §12.33 regarding Certificate of Conference, §12.34 regarding Motion Deadlines, §12.35 regarding Method of Filing, §12.36 regarding Service of Documents, §12.37 regarding Non-conforming Documents, §12.38 regarding Amended and Supplemental Filings, and §12.39 regarding Application of this Subchapter.

The TEC also proposes new rules in Division 2 of Subchapter D of Chapter 12 (relating to Pleadings and Motions: Types of Motions), including §12.41 regarding Motion to Extend Time, §12.42 regarding Motion for Continuance, §12.43 regarding Motion to Dismiss, §12.44 regarding Motion for Summary Disposition, and §12.45 regarding Motion for Sanctions.

The TEC also proposes new rules in Division 1 of Subchapter E of Chapter 12 (relating to Hearings: General Rules), including §12.51 regarding Conduct and Decorum, §12.52 regarding Private Deliberations, and §12.53 regarding Record of Rulings.

The TEC also proposes new rules in Division 2 of Subchapter E of Chapter 12 (relating to Hearings: Powers of the Presiding Officer), including §12.61 regarding Selection and Delegation of Presiding Officer, §12.62 regarding Set Hearing, §12.63 regarding Consolidate or Sever Matters for Hearing, §12.64 regarding Conduct Hearings, §12.65 regarding Rule of Evidentiary Matters and §12.66 regarding Sign Orders and Subpoenas.

The TEC also proposes new rules in Division 3 of Subchapter E of Chapter 12 (relating to Hearings: Preliminary Review Hearings), including §12.71 regarding Notice of Preliminary Review Hearing, and §12.72 regarding Preliminary Review Hearing.

The TEC also proposes new rules in Division 4 of Subchapter E of Chapter 12 (relating to Hearings: Formal Hearings), including §12.81 regarding Order of Formal Hearing, §12.82 regarding Notice of Formal Hearing, §12.83 regarding Formal Hearing: Venue, §12.84 regarding Presentation of Evidence, §12.85 regarding Rules of Evidence, and §12.86 regarding Number of Exhibits.

The TEC also proposes new rules in Subchapter F of Chapter 12 (relating to Resolutions), including §12.91 regarding Agreed Resolutions, §12.92 regarding Resolution of Technical or De Minimis Allegations, §12.93 regarding Default Proceedings and §12.94 regarding Final Orders After Formal Hearings.

This proposal, along with the contemporaneous proposal of the repeal of all existing rules in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules ... not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code § 2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

The General Counsel has also determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

The General Counsel has determined that during the first five years that the proposed rules are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed rules may do so at any Commission meeting during the agenda item relating to the proposed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the TEC's website at www.ethics.state.tx.us.

SUBCHAPTER A. RESPONDENT'S RIGHTS

1 TAC §§12.1 - 12.4

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.1. Notice.

(a) A notice required to be sent to a complainant under chapter 571 of the Government Code shall be sent to the address most recently provided to the commission by the complainant.

(b) A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided to the commission by the complainant or, if the respondent has provided a different address, to the address most recently provided to the commission by the respondent.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director.

(d) A respondent or complainant in a complaint may waive the right under section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means.

§12.2. Representation by Counsel.

(a) A respondent has the right to be represented by counsel retained by the respondent in any proceeding of a complaint.

(b) Counsel representing a respondent shall enter an appearance with the commission that contains the counsel's mailing address, email address, telephone number, and state bar number. If the respondent's counsel is not licensed to practice law in Texas, the representative must show authority to appear as the respondent's counsel.

(c) The commission may, through the approval of its executive director, admit an attorney who is a resident of and licensed to practice law in another state, and who is not an active member of the State Bar of Texas, to represent a respondent before the commission if the non-resident attorney complies with the requirements of Tex. Gov't Code §82.0361 and Rule XIX of the Rules Governing Admission to the Bar of Texas and files a motion, accompanied by proof of compliance with those provisions, with the commission requesting to be admitted to represent a respondent.

(d) This rule does not allow a person to engage in the unauthorized practice of law.

§12.3. Ex Parte Communications.

Neither commission enforcement staff nor respondents may communicate with commissioners or the general counsel outside the presence of the other party for the purpose of influencing a decision on a pending sworn complaint after the commission accepts jurisdiction over an allegation.

§12.4. Agreements to be in Writing.

No stipulation or agreement with respect to any matter in a complaint shall be effective unless it has been:

(1) reduced to writing and signed by each person making the stipulation or agreement, or by that person's authorized representative, and filed with the commission; or

(2) entered into the record during the course of a 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.

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James Tinley
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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.11 - 12.15

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.11. Deadline for Filing a Complaint.

(a) The commission has no jurisdiction over an alleged violation:

(1) if the alleged violation is also a criminal offense, and if, at the time the complaint is filed or at the time the commission would vote to initiate a preliminary review of a matter, the allegation would be barred from criminal prosecution by operation of the applicable statute of limitations; or

(2) if the alleged violation is not also a criminal offense and if the allegation is based on facts that occurred more than three years before the date the complaint is filed or the date the commission would vote to initiate a preliminary review of a matter.

(b) For purposes of this section, a complaint is not filed unless it complies with the requirements of section 571.122 of the Government Code.

§12.12. File Date for a Complaint.

The file date for a complaint is the date the complaint is received by the commission.

§12.13. Description of Violation.

(a) If a complaint does not include the specific rule or provision of law alleged to have been violated, the complaint must clearly and concisely describe facts that, if true, would constitute a violation of a law administered and enforced by the commission.

(b) A complaint that erroneously cites a specific rule or provision of law is nonetheless sufficient if the correct citation can reasonably be ascertained by the commission. When a complaint erroneously cites a specific rule or provision of law, the commission shall cite the correct rule or provision of law in the notice provided to the respondent.

§12.14. Statement of Facts.

(a) The alleged facts must provide sufficient detail to reasonably place the respondent on notice of the law violated and of the manner and means by which the violation allegedly occurred and to afford the respondent a basis on which to prepare a response.

(b) The facts alleged may adopt by reference the content of documents submitted with the complaint. However, the allegations must reasonably identify those portions of the document that are relevant to the alleged violation.

§12.15. Commission Initiated Complaint.

(a) Commission staff may gather or present documents or evidence, make recommendations, and otherwise communicate with commissioners in contemplation of, or in preparation for, a commission initiated preliminary review. Commissioners may request documents, evidence, or recommendations, and otherwise communicate with commission staff in contemplation of, or in preparation for, a commission initiated preliminary review.

(b) A preliminary review initiated by the commission under section 571.124(b) of the Government Code is deemed to be a complaint for purposes of all further proceedings under chapter 571 of the Government Code and of this chapter.

(c) Documents or evidence gathered by the commission and commission staff in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

(d) Discussions between the commission and commission staff regarding gathering documents or evidence in contemplation of, or in preparation for, a commission initiated preliminary review are related to the processing of a preliminary review or motion for the purposes of sections 571.139 and 571.140 of the Government Code.

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SUBCHAPTER C. INVESTIGATION AND DISCOVERY

1 TAC §§12.21 - 12.26

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.21. Response to Notice of Complaint.

(a) The response required by section 571.1242 of the Government Code must:

- (1) be in writing;
 - (2) admit or deny the allegations set forth in the complaint;
- and
- (3) be signed by the respondent.

(b) If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response.

(c) If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the commission may issue an order imposing a penalty for failure to file a complete response.

§12.22. Written Questions.

(a) A complainant or respondent must respond to written questions not later than 15 business days after receiving the written questions.

(b) If the commission staff submits written questions to a respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the commission sends the written questions and resets on the date the commission receives the respondent's written response.

§12.23. Production of Documents During Preliminary Review.

(a) Before applying for the commission to issue a subpoena under §571.137(a-1) of the Government Code, commission staff must send to the person from whom records are sought a written request for the production or inspection of documents or other tangible things that:

(1) specifies the items to be produced or inspected, either by individual item or by category, and describes with reasonable particularity each item and category; and

(2) provides a reasonable amount of time, but not less than 30 days, to comply with the request.

(b) The person from whom records are sought must produce or allow the inspection of documents or other tangible things within the person's possession, custody or control within the time provided in the request, or submit in writing, as appropriate:

(1) objections to those records that are unreasonable, improper, or unnecessary to investigate the complaint; or

(2) that, after a diligent search, no items have been identified that are responsive to the request.

(c) Commission staff shall provide to the commission any response it receives to its request for production or inspection when applying for a subpoena under §571.137(a-1) of the Government Code.

(d) If the commission staff applies to the commission for the issuance of a subpoena pursuant to section 571.137(a-1) of the Government Code, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is tolled beginning on the date the staff applies to the commission for the subpoena and resets on either:

(1) the date the commission rejects the staff's application for a subpoena;

(2) the date the person to whom the subpoena is directed complies with the subpoena; or

(3) the date the commission receives a final ruling on a person's failure or refusal to comply with a subpoena that is reported to a district court pursuant to section 571.137(c) of the Government Code.

§12.24. Proposed Settlement Before Preliminary Review Hearing.

If commission staff proposes to a respondent an agreement to settle a complaint that would be effective upon approval by the commission and the respondent, the 120-day deadline for the commission to propose an agreement to the respondent or dismiss the complaint (provided in section 571.1242(g) of the Government Code) is met. If a respondent approves a proposed agreement, commission staff must submit the proposed agreement to the commission to seek final approval at the next scheduled commission meeting. If a respondent rejects a proposed

agreement, the matter shall be set for a preliminary review hearing at the next commission meeting for which notice has not yet been posted. If a respondent rejects a proposed agreement within 45 days before the date of a commission meeting, the matter shall be set for a preliminary review hearing at the next commission meeting thereafter.

§12.25. Subpoenas Issued by Commission.

(a) A subpoena issued under §571.137 of the Government Code shall specify the date, time, place, and manner for execution of the subpoena.

(b) A subpoena issued under section 571.137 of the Government Code that requires a person to provide testimony shall be served on that person at least 10 business days before the date the subpoena is to be executed.

(c) A subpoena sought by commission staff under section 571.137(a) of the Government Code must be requested in writing and may be approved and issued by the unanimous agreement of the chair and vice chair. If either the chair or vice chair does not approve the request, then staff may seek approval through a vote of the commission, in which case the subpoena will be issued upon the affirmative vote of five commissioners.

§12.26. Subpoenas Issued by Counsel for the Respondent.

(a) This section applies only to subpoenas issued by a respondent's counsel under section 571.125(f) (concerning the issuance of a subpoena for a witness in a preliminary review hearing) or 571.130(f) (concerning the issuance of a subpoena for a witness in a formal hearing) of the Government Code.

(b) A subpoena must be issued in the name of "The State of Texas" and must:

(1) state the sworn complaint numbers for the sworn complaints at issue in the hearing at which the witness is summoned to appear;

(2) state that the subpoena pertains to a sworn complaint proceeding before the Texas Ethics Commission;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the time and place of the preliminary review hearing or formal hearing at which the subpoena directs the person to appear;

(6) identify the respondent at whose instance the subpoena is issued and the respondent's attorney of record;

(7) specify with reasonable particularity any documents with which the person to whom the subpoena is directed shall appear;

(8) state the text of §12.31(i) of this chapter (relating to Purpose and Effect of Motions); and

(9) be signed by the attorney issuing the subpoena.

(c) A subpoena must command the person to whom it is directed to appear and give testimony at:

(1) a preliminary review hearing; or

(2) a formal hearing.

(d) A subpoena may only direct a person to appear, with or without documents, and give testimony at a preliminary review hearing or formal hearing before the commission.

(e) A subpoena may be issued only by the counsel of record for a respondent in a sworn complaint proceeding before the commission against that respondent.

(f) Service.

(1) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the sworn complaint proceeding, the subpoena may be served on the witness's attorney of record.

(2) Deadline for service. A subpoena must be served upon the person required to appear at least 21 days before the preliminary review hearing or formal hearing at which the person is required to appear. The subpoena and proof of service must be filed with the commission within three days of its service on the person required to appear.

(3) Proof of service. Proof of service must be made by filing either:

(A) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(B) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(g) Response.

(1) Except as provided in this subsection, a person served with a subpoena must comply with the command stated therein unless discharged by the commission or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of hearing from day to day until discharged by the commission or the party summoning the witness.

(2) If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(3) A person commanded to appear with documents must produce the documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand.

(4) A person commanded to appear at a hearing must file any motion to quash the subpoena or objection to a requirement to appear with certain documents with the commission no later than the 14th day before the hearing at which the person is directed to appear. Commission staff may move to quash a subpoena or object to appearance with certain documents in the same manner as the person commanded to appear by the subpoena. The filer of a motion to quash or objection to a requirement to appear with certain documents must serve the motion or objection on the proponent of the subpoena in person, by mail, by commercial delivery service, by fax, by email, or by other such manner as the presiding officer of the commission may direct, no later than the deadline for filing the motion to quash or objection to appearance with documents with the commission. After affording commission staff and the person commanded to appear an opportunity to move to quash the subpoena or object to appearance with certain documents, and affording the proponent of the subpoena an opportunity to respond to the motion to quash or objection to appearance with documents, the commission's presiding officer shall rule on a motion to quash or objection to appearance with documents.

(5) A person commanded to attend and give testimony, or to produce documents or things, at a preliminary review hearing or for-

mal hearing may object to giving testimony or producing documents at the time and place specified for the hearing, rather than under paragraph (4) of this subsection.

(6) A party's appearance with a document in response to a subpoena directing the party to appear with the document authenticates the document for use against that party in any proceeding before the commission unless the party appearing with the document objects to the authenticity of the document, or any part of it, at the time of the party's appearance, stating the specific basis for objection. An objection must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity. The requirement that the commission provide a reasonable opportunity to establish the document's authenticity may be satisfied by the opportunity to present a witness to authenticate the document at a subsequent hearing before the commission.

(h) A counsel for a respondent issuing a subpoena must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on a motion to quash or objection to appearance with documents, the presiding officer must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The presiding officer may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

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SUBCHAPTER D. PLEADINGS AND MOTIONS

DIVISION 1. GENERAL RULES

1 TAC §§12.31 - 12.39

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.31. Purpose and Effect of Motions.

To make a request, including to obtain a ruling, order, or any other procedural relief, a party shall file a written motion. The motion shall describe specifically the action requested and the basis for the requested action. Unless otherwise specified in this chapter, a motion is not granted until it has been ruled on by the executive director, the presiding officer, or by vote of the commission, as applicable, even if the motion is uncontested or agreed.

§12.32. Required Form of Motions.

Written requests for commission action shall be typewritten or printed legibly on 8-1/2 x 11-inch paper and timely filed with the commission. Photocopies are acceptable if copies are clear and legible. All filings shall contain or be accompanied by the following:

- (1) the name of the party seeking action;
- (2) the sworn complaint number;
- (3) the parties to the case and their status as commission staff or respondent;
- (4) a concise statement of the type of relief, action, or order desired and identification of the specific reasons for and facts to support the action requested;
- (5) the signature of the submitting party or the party's authorized representative;
- (6) a proposed order sought by the moving party; and
- (7) a reference in the motion's title to a request for a hearing on the motion if the moving party seeks a hearing.

§12.33. Certificate of Conference.

Except as provided in this chapter or unless otherwise ordered by the presiding officer, all motions shall include a certificate of conference that complies substantially with one of the following examples:

(1) Example one: "Certificate of Conference: I certify that I conferred with {name of other party or other party's authorized representative} on {date} about this motion. {Succinct statement of other party's position on the action sought and/or a statement that the parties negotiated in good faith but were unable to resolve their dispute before submitting it to the commission for resolution.} Signature."; or;

(2) Example two: "Certificate of Conference: I certify that I made reasonable but unsuccessful attempts to confer with {name of other party or other party's authorized representative} on {date or dates} about this motion. {Succinctly describe these attempts.} Signature."

§12.34. Motion Deadlines.

(a) The following deadlines apply to motions in which a hearing is either sought by a party or scheduled by the presiding officer:

- (1) motions must be filed with the commission no later than 30 days before the date of the hearing;
- (2) responses to motions must be filed with the commission no later than 14 days before the date of the hearing; and
- (3) replies to responses must be filed with the commission no later than 7 days before the date of the hearing.

(b) A scheduling order containing the deadlines under this section shall be included with the notice required by section 571.126 of the Government Code. The presiding officer may amend a scheduling order upon the request of a party for good cause shown. A decision by the presiding officer to amend a scheduling order or to deny a motion, response, or evidence shall be issued to the parties to a hearing within 5 business days after the decision is made.

(c) Except as otherwise provided in this chapter or as ordered or allowed by the commission, responses to motions shall be in writing and filed by the applicable deadline. However, if the presiding officer finds good cause has been shown, responses to written motions may be presented orally at hearing.

(d) The presiding officer may deny a party's motions, responses, or replies or deny a party's evidence from being admitted into the record of the hearing if the party fails to timely file.

§12.35. Method of Filing.

(a) Motions, responses, and other documents in a sworn complaint proceeding must be filed with the commission by emailing it to sworncomplaints@ethics.state.tx.us and including the following information in the subject line:

- (1) the sworn complaint number; and
- (2) the title of the document.

(b) The time and date of filing is the electronic time stamp affixed by the commissions email system. Documents received when the commission is closed shall be deemed filed the next business day.

§12.36. Service of Documents.

(a) On the same date a document is filed with the commission, a copy shall also be sent to each party or the party's authorized representative by hand-delivery; by regular, certified, or registered mail; or by email, upon agreement of the parties.

(b) A person filing a document shall include a certificate of service that certifies compliance with this section.

(1) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., email, regular mail, fax, certified mail.} {Signature}"

(2) If a filing does not certify service, the commission may:

- (A) return the filing;
- (B) send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or
- (C) send a copy of the filing to all parties.

(c) The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party, the commission shall presume that the document was received on the date of filing at the commission.

(2) If a document was served by courier-receipted overnight delivery, the commission shall presume that the document was received no later than the next business day after filing at the commission.

(3) If a document was served by regular, certified, or registered mail, or non-overnight courier-receipted delivery, the commission shall presume that it was received no later than three days after mailing.

(4) If a document was served by fax or email before 5:00 p.m. on a business day, the commission shall presume that the document was received on that day; otherwise, the commission shall presume that the document was received on the next business day.

(d) The sender has the burden of proving date and time of service.

§12.37. Non-conforming Documents.

When a filed document fails to conform to the requirements of this subchapter, the executive director may either:

- (1) reject the filing, identify the errors to be corrected and state a deadline for correction; or
- (2) accept the filing.

§12.38. Amended and Supplemental Filings.

A party may amend or supplement its pleadings as follows:

(1) If a notice of a hearing or other documents provided to the complainant or respondent under section 571.126(b)(2) of the Government Code contain a material defect, the commission may correct the notice or other document and deliver it to the complainant and respondent as soon as practicable and in the same manner as the original notice. If the respondent does not receive the correction at least 10 days before the date of the hearing, the presiding officer may by order reschedule the hearing. The executive director shall notify the parties and the complainant of the date, time, and place of the hearing as soon as practicable.

(2) As to all other matters, an amendment or supplementation that includes information material to the substance of a hearing, requests for relief, changes to the scope of a hearing, or other matters that unfairly surprise other parties may not be filed later than seven days before the date of the hearing, except by agreement of all parties or by permission of the presiding officer.

§12.39. Application of this Subchapter.

If there is a conflict between this section and a requirement found in another section relating to a specific type of motion, the more specific provision applies.

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DIVISION 2. TYPES OF MOTIONS

1 TAC §§12.41 - 12.45

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.41. Motion to Extend Time.

(a) The executive director may extend a deadline pursuant to §571.136 of the Government Code.

(b) A request for more time to file a document or respond to discovery shall include:

(1) a statement of the number of extension requests previously sought in the case by the movant;

(2) the specific reason for the request; and

(3) a proposed date for the deadline the movant seeks to extend.

(c) Motions to extend time shall be filed no later than five days before the date of the deadline at issue or shall state good cause for presenting the motion after that time. If the executive director finds

good cause has been demonstrated, the executive director may consider a motion filed after that time.

(d) Unless otherwise ordered by the executive director, responses to motions for extension of a deadline are due three days after receipt of the motion.

(e) A motion for continuance or extension of time is not granted until it has been ruled on by the executive director, even if the motion is uncontested or agreed.

§12.42. Motion for Continuance.

(a) The presiding officer may postpone or delay a hearing.

(b) A request to postpone or delay a hearing shall include:

(1) a statement of the number of motions for continuance previously filed in the case by the movant;

(2) the specific reason for the request; and

(3) whether the movant is available if the hearing or pre-hearing conference is continued to the next tentatively scheduled commission meeting.

(c) Motions for continuance shall be filed no later than five days before the date of the proceeding or shall state good cause for presenting the motion after that time. If the presiding officer finds good cause has been demonstrated, the presiding officer may consider a motion filed after that time.

(d) Responses to motions for continuance shall be in writing, except a response to a motion for continuance made on the date of the proceeding may be presented orally at the proceeding. Unless otherwise ordered or allowed by the presiding officer, responses to motions for continuance shall be made by the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the proceeding.

(e) A motion for continuance is not granted until it has been ruled on by the presiding officer, even if the motion is uncontested or agreed.

§12.43. Motion to Dismiss.

(a) A party may move to dismiss a complaint in whole or in part on the grounds that an alleged violation has no basis in law or fact. An alleged violation has no basis in law if the allegations, if taken as true, together with inferences reasonably drawn from them do not constitute a violation of a rule adopted by or a law administered and enforced by the commission. An alleged violation has no basis in fact if no reasonable person could believe the facts alleged.

(b) A motion to dismiss must identify each alleged violation to which it is addressed, and must state specifically the reasons the alleged violation has no basis in law, no basis in fact, or both.

(c) The commission may, but is not required to, conduct an oral hearing on the motion to dismiss. The commission may not consider evidence in ruling on the motion and must decide the motion based solely on the facts alleged in the complaint, together with any complaint exhibits permitted by commission rule or statute.

§12.44. Motion for Summary Disposition.

(a) Summary disposition shall be granted on all or part of a complaint's allegations if the allegations, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. Summary disposition is not permitted based on the ground that there is no evidence of one or more

essential elements of a claim or defense on which the opposing party would have the burden of proof at the formal hearing.

(b) Unless otherwise ordered by the presiding officer:

(1) A party must file a motion for summary disposition at least 45 days before a scheduled hearing on the merits.

(2) The response and opposing summary disposition evidence shall be filed no later than 15 days after the filing of the motion.

(c) A motion for summary disposition shall include the contents listed below. A motion may be denied for failure to comply with these requirements.

(1) The motion shall state the specific issues upon which summary disposition is sought and the specific grounds justifying summary disposition.

(2) The motion shall also separately state all material facts upon which the motion is based. Each material fact stated shall be followed by a clear and specific reference to the supporting summary disposition evidence.

(3) The first page of the motion shall contain the following statement in at least 12-point, bold-face type: "Notice to parties: This motion requests the commission to decide some or all of the issues in this case without holding an evidentiary hearing on the merits. You have 15 days after the filing of the motion to file a response. If you do not file a response, this case may be decided against you without an evidentiary hearing on the merits."

(d) Responses to motions.

(1) A party may file a response and summary disposition evidence to oppose a motion for summary disposition.

(2) The response shall include all arguments against the motion for summary disposition, any objections to the form of the motion, and any objections to the summary disposition evidence offered in support of the motion.

(e) Summary disposition evidence.

(1) Summary disposition evidence may include deposition transcripts; interrogatory answers and other discovery responses; pleadings; admissions; affidavits; materials obtained by discovery; matters officially noticed; stipulations; authenticated or certified public, business, or medical records; and other admissible evidence. No oral testimony shall be received at a hearing on a motion for summary disposition.

(2) Summary disposition may be based on uncontroverted written testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the presiding officer must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(3) All summary disposition evidence offered in support of or in opposition to a motion for summary disposition shall be filed with the motion or response. Copies of relevant portions of materials obtained by discovery that are relied upon to support or oppose a motion for summary disposition shall be included in the summary disposition evidence.

(f) Proceedings on motions.

(1) The presiding officer may order a hearing on a motion for summary disposition and the commission may rule on the motion without a hearing.

(2) The affirmative vote of six commissioners is necessary to grant summary disposition finding a violation by a preponderance of the evidence.

(3) If summary disposition is granted on all contested issues in a case, the record shall close on the date ordered by the presiding officer or on the later of the filing of the last summary disposition arguments or evidence, the date the summary disposition response was due, or the date a hearing was held on the motion. The commission shall issue a final decision and written report, including a statement of reasons, findings of fact, and conclusions of law in support of the summary disposition rendered.

(4) If summary disposition is granted on some but not all of the contested issues in a case, the commission shall not take evidence or hear further argument upon the issues for which summary disposition has been granted. The commission shall issue an order:

(A) specifying the facts about which there is no genuine issue;

(B) specifying the issues for which summary disposition has been granted; and

(C) directing further proceedings as necessary. If an evidentiary hearing is held on the remaining issues, the facts and issues resolved by summary disposition shall be deemed established, and the hearing shall be conducted accordingly. After the evidentiary hearing is concluded, the commission shall include in the final decision a statement of reasons, findings of fact, and conclusions of law in support of the partial summary disposition rendered.

§12.45. Motion for Sanctions.

(a) The commission has the authority to impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that is deemed by the commission to be groundless and brought:

(A) in bad faith;

(B) for the purpose of harassment; or

(C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abuse of the discovery process in seeking, making, or resisting discovery;

(3) failure to comply with a commission order; or

(4) violating §12.51 of this chapter (relating to Conduct and Decorum).

(b) By record vote of at least six commissioners, the commission may issue an order imposing sanctions when justified by party or representative behavior described in subsection (a) of this section and after notice and opportunity for hearing. Sanctions may include:

(1) disallowing or limiting further discovery by the offending party;

(2) charging all or part of the expenses of discovery against the offending party or its representatives;

(3) deeming designated facts be admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a claim or defense or prohibiting the party from introducing designated matters into the record;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking motions or testimony in whole or in part.

(c) In deciding if a complaint is frivolous, the commission will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

(1) the timing of the complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(2) the nature and type of any publicity surrounding the filing of the complaint, and the degree of participation by the complainant in publicizing the fact that a complaint was filed with the commission;

(3) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(4) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(5) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(6) any evidence of the complainant's motives in filing the complaint.

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SUBCHAPTER E. HEARINGS DIVISION 1. GENERAL RULES

1 TAC §§12.51 - 12.53

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. Conduct and Decorum.

(a) Parties, representatives, and other participants at a hearing shall conduct themselves with dignity, show courtesy and respect for one another and for the commission, and follow any additional guidelines of decorum prescribed by the presiding officer, including adherence to the amount of time allotted for the hearing. Attorneys shall adhere to the standards of conduct in the Texas Lawyer's Creed promulgated by the Supreme Court of Texas and the Court of Criminal

Appeals and the Texas Disciplinary Rules of Professional Conduct promulgated by the Supreme Court of Texas.

(b) Attorneys should advise their clients and witnesses of the applicable rules of conduct and decorum.

(c) All objections, arguments, and other comments by parties shall be directed to the commission and not to an opposing party.

(d) While a party is addressing the commission or questioning a witness, any other party shall not interrupt for any purpose except to make a valid objection.

(e) Parties shall not approach the dais without leave of the presiding officer and must not lean on the dais.

(f) Parties shall remain seated at the counsel table at all times except:

(1) when addressing the commission; and

(2) whenever it may be proper to handle documents, exhibits, or other evidence.

(g) Parties must question witnesses and deliver arguments to the commission while seated at the counsel table or standing at the lectern. If a party seeks to question or argue from another location, leave of the presiding officer must be requested and granted.

(h) Parties must request leave of the presiding officer to conduct a demonstration.

(i) The presiding officer may take appropriate action to maintain and enforce proper conduct and decorum, including:

(1) issuing a warning;

(2) sanctioning a party pursuant to §12.33 of this chapter (relating to Certificate of Conference);

(3) excluding persons from the proceeding;

(4) recessing the proceeding; and

(5) clearing the hearing room of persons causing a disruption.

§12.52. Private Deliberations.

As provided by section 571.139 of the Government Code, the commission may deliberate in private regarding the resolution of a sworn complaint or motion, including a dismissal of a complaint, a determination of whether a violation within the jurisdiction of the commission has occurred, and an appropriate penalty upon a finding of a violation. As provided by section 2001.061 of the Government Code, the presiding officer may permit the executive director, general counsel, or other employee of the commission who has not participated in a hearing in the complaint for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

§12.53. Record of Rulings.

Rulings not made orally at a recorded hearing shall be in writing and issued to all parties of record.

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

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James Tinley
General Counsel
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DIVISION 2. POWERS OF THE PRESIDING OFFICER

1 TAC §§12.61 - 12.66

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.61. Selection and Delegation of Presiding Officer.

(a) Except as otherwise provided in subsection (b), the commission's chair shall serve as the presiding officer for all hearings.

(b) The chair may appoint another commissioner to preside over a hearing held by the commission.

§12.62. Set Hearings.

The presiding officer may order that one or more hearings be held to address any matters pending in a sworn complaint proceeding, including motions to dismiss, motions for discovery or subpoenas, motions for sanctions, or any other matters related to the proceeding. The commission shall provide such an order to the parties and the complainant within five business days after the decision is made. The order shall include the date, time, and place of the hearing and a list of the matters to be addressed at the hearing.

§12.63. Consolidate or Sever Matters for Hearing.

(a) The presiding officer may order that cases be consolidated or joined for hearing if there are common issues of law or fact and consolidation or joint hearing will promote the fair and efficient handling of the matters.

(b) The presiding officer may order severance of issues if separate hearings on the issues will promote the fair and efficient handling of the matters.

§12.64. Conduct Hearings.

The presiding officer shall have the authority and duty to conduct a full, fair, and efficient hearing, including the power to:

- (1) administer oaths;
- (2) take testimony, including the power to question witnesses and to request the presence of a witness from a state agency;
- (3) require the prefilings of exhibits and testimony;
- (4) exclude irrelevant, immaterial, or unduly repetitious testimony;
- (5) reasonably limit the time for presentations of evidence or argument;
- (6) reopen the record when justice requires, if the commission has not issued a final order; and
- (7) take other steps conducive to a fair and efficient formal hearing.

§12.65. Rule on Evidentiary Matters.

The presiding officer shall have the power to rule on admissibility and other questions of evidence.

§12.66. Sign Orders and Subpoenas.

The presiding officer may sign previously approved subpoenas and orders.

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

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DIVISION 3. PRELIMINARY REVIEW HEARINGS

1 TAC §12.71, §12.72

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.71. Notice of Preliminary Review Hearing.

(a) Commission staff shall provide notice of a preliminary review hearing to a respondent and complainant at least 30 days before the date of the hearing and must include:

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall provide to a respondent at least 10 days before the date of the hearing:

- (1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and
- (2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall provide to commission staff the contents described by subsections (b)(1) and (b)(2) of this section at least 5 days before the date of the hearing. If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.72. Preliminary Review Hearing.

(a) Commission staff and the respondent may present any relevant evidence at a preliminary review hearing, including examination and cross-examination of witnesses.

(b) Commission staff and the respondent may present an opening and closing statement at a preliminary review 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.

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DIVISION 4. FORMAL HEARINGS

1 TAC §§12.81 - 12.86

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. Order of Formal Hearing.

As soon as practicable after the commission orders a formal hearing, the executive director shall provide to the parties to the complaint, and to the complainant, a copy of the commission's decision to order the hearing. The decision shall include the date, time, and place of the hearing and be signed by the presiding officer.

§12.82. Notice of Formal Hearing.

(a) Commission staff shall provide notice of a formal hearing to a respondent and complainant at least 60 days before the date of the hearing and must include, in addition to the contents required by section 571.126(b) of the Government Code:

(1) the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the factual matters asserted.

(b) Commission staff shall file and provide to a respondent and complainant at least 30 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(c) The respondent shall file and provide to commission staff at least 14 days before the date of the hearing:

(1) a list of proposed witnesses to be called at the hearing and a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing; and

(2) copies of all documents expected to be used or introduced as exhibits at the hearing.

(d) If a respondent or commission staff fail to comply with this section, the commission may reschedule the hearing or proceed with the hearing and exclude at the hearing evidence, documents, and testimony provided by the respondent or commission staff, as applicable, but such failure may be excused upon a showing of good cause.

§12.83. Formal Hearing: Venue.

When the commission orders a formal hearing the commission shall decide whether the formal hearing will be held before the commission or before the State Office of Administrative Hearings.

§12.84. Presentation of Evidence.

(a) After the resolution of all prehearing matters, each party shall make its presentation during the formal hearing. Commission staff shall make the first opening statement. The respondent or respondent's authorized representative shall then make an opening statement, should the respondent wish to do so at that time. The respondent may reserve the opening statement until the presentation of the respondent's case.

(b) Following opening statements, commission staff may present evidence in its case. At the conclusion of the presentation of the evidence, commission staff may rest. The respondent or the respondent's authorized representative may then make an opening statement, or, if an opening statement has already been made, present evidence in its defense of the allegations raised in the notice of formal hearing. At the conclusion of the presentation of evidence by the respondent, the respondent may rest.

(c) After both parties have rested their case, commission staff shall make a closing argument. The respondent may then make a closing argument. Commission staff may then make a reply.

(d) Unless otherwise ordered by the presiding officer, after closing arguments, evidence will be closed and the case will be turned over to the members of the commission for deliberation and decision.

§12.85. Rules of Evidence.

(a) The Texas Rules of Evidence as applied in a nonjury civil case in district court govern a formal hearing only to the extent consistent with Chapter 571 of the Government Code.

(b) Evidence may be admitted if it meets the standards set out in section 2001.081 of the Government Code.

§12.86. Numbering of Exhibits.

(a) Each exhibit to be offered shall first be numbered by the offering party.

(b) Copies of the original exhibit shall be furnished by the party offering the exhibit to the commission and to each party present at the hearing unless otherwise ordered by the presiding officer.

(c) An exhibit excluded from evidence will be considered withdrawn by the offering party and will be returned to the party.

(d) Pre-numbered exhibits may be filed with the commission prior to the formal hearing. Pre-numbered exhibits that are not offered and admitted at the hearing will be deemed withdrawn.

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SUBCHAPTER F. RESOLUTIONS

1 TAC §§12.91 - 12.94

The new rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.91. Agreed Resolutions.

(a) Upon the affirmative vote of six commissioners, the commission may enter into an agreed resolution with a respondent to settle a complaint filed against the respondent, including an assurance of voluntary compliance, a notice of reporting error, or an agreed order.

(b) An assurance of voluntary compliance:

(1) resolves a sworn complaint:

(A) with no determination that a violation within the jurisdiction of the commission has occurred, if entered into before a preliminary review hearing is completed; or

(B) with a determination that all violations within the jurisdiction of the commission, when viewed as a whole in consideration of any mitigating action taken by the respondent, are technical or de minimis; and

(2) may include a civil penalty.

(c) A notice of reporting error resolves a complaint with a determination that all violations within the jurisdiction of the commission are reporting errors that do not materially defeat the purpose of disclosure and may include a civil penalty in the form of an assessment fee.

(d) An agreed order resolves a sworn complaint with a determination that one or more violations within the jurisdiction of the commission occurred and may include a civil penalty.

§12.92. Resolution of Technical or De Minimis Allegations.

(a) Technical, clerical, or de minimis violations for purposes of §§571.0631 and 571.140 of the Government Code means any violation of law under the TEC's jurisdiction that neither materially affects disclosure nor undermines public trust in government.

(b) Examples of technical, clerical, or de minimis violations include:

(1) Typographical or incomplete information on a campaign finance report that is not misleading and does not materially affect disclosure;

(2) Failure to include a disclosure statement or a highway right-of-way notice on political advertising;

(3) Failure of a non-incumbent to use the word "for" in a campaign communication that is not otherwise misleading;

(4) Failure to file a timely campaign finance report or campaign treasurer appointment if the alleged violations do not materially affect disclosure;

(5) Failure to timely respond to a sworn complaint if the respondent shows good cause for the late response.

(c) During the review of a sworn complaint under Chapter 571, Subchapter E of the Government Code, if the executive director determines that all of the alleged violations in the sworn complaint are technical or de minimis, the executive director may enter into an assurance of voluntary compliance with the respondent. Before entering into an assurance of voluntary compliance, the executive director may require a respondent to correct the violations.

§12.93. Default Proceedings.

(a) If a respondent fails to respond to a complaint by the deadline set by Section 571.1242 or fails to appear for a formal hearing, the commission may, upon notice and hearing, proceed on a default basis.

(b) A default proceeding under this section requires adequate proof of the following:

(1) the notice of hearing to the respondent stated that the allegations listed in the notice could be deemed admitted and that the relief sought in the notice of hearing might be granted by default against the party that fails to appear at the hearing;

(2) the notice of hearing satisfies the requirements of sections 2001.051 and 2001.052 of the Government Code; and

(3) the notice of hearing was:

(A) received by the defaulting party; or

(B) sent by regular mail or by certified mail, restricted delivery, return receipt requested, to the party's last known address as shown by the commission's records.

(c) In the absence of adequate proof to support a default, the presiding officer shall continue the hearing and direct commission staff to provide adequate notice of hearing. If adequate notice is unable to be provided, the commission may dismiss the complaint.

(d) Upon receiving the required showing of proof to support a default, the commission may by vote deem admitted the allegations in the notice of hearing and issue a default decision.

§12.94. Final Orders after Formal Hearings.

(a) The commission should issue a final order within 60 days after the conclusion of a formal hearing.

(b) The executive director shall dismiss a complaint if the commission fails to adopt a motion under section 571.132 of the Government Code. The dismissal shall state the complaint was dismissed because there were insufficient commission votes to find that there was or was not a violation of law.

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CHAPTER 12. SWORN COMPLAINTS

The Texas Ethics Commission (the TEC) proposes the repeal of all existing rules in Texas Ethics Commission Chapter 12.

Specifically, the Commission proposes the repeal of all rules in Subchapter A of Chapter 12 (relating to General Provision and Procedures), including §12.5, regarding Deadline for Filing a Complaint, §12.6 regarding File Date for Purposes of Commission Response Deadline, §12.7 regarding Confidentiality, §12.9 regarding Compliance with Open Meetings Law and Open Records Law, §12.11 regarding Delegation to Executive Director, §12.13 regarding Representation by Counsel, §12.15 regarding Appearance of Complainant at Hearing, §12.19 regarding Agreements to be in Writing, §12.21 regarding Notice, §12.23 regarding Hearing in Respondent's Absence, §12.25 regarding Waiver of Hearing, §12.27 regarding Deadline Extension, §12.28 regarding Production of Documents During Preliminary Review, §12.29 regarding Subpoenas Issued by Commission, §12.30 regarding Subpoenas Issued by Counsel for the Respondent, §12.31 regarding Conduct and Decorum, §12.33 regarding Sanctioning Authority, §12.34 regarding Agreed Orders, §12.35 regarding Frivolous Complaint, and §12.36 regarding Assessment of Civil Penalty.

The TEC also proposes the repeal of all rules in Subchapter B of Chapter 12 (relating to Filing and Initial Processing of a Complaint), including §12.51 regarding Non-Complying Complaint, §12.52 regarding Response to Notice of Complaint, §12.53 regarding Commission Initiated Complaint, §12.59 regarding Description of Violation, §12.61 regarding Statement of Facts, and §12.67 regarding Copies and Documents Provided by the Commission.

The TEC also proposes the repeal of all rules in Subchapter C of Chapter 12 (relating to Investigation and Preliminary Review), including §12.81 regarding Technical, Clerical, or De Minimis Violations, and §12.83 regarding Preliminary Review.

The TEC also proposes the repeal of all rules in Subchapter D of Chapter 12 (relating to Preliminary Review Hearing), including §12.84 regarding Notice of Preliminary Review Hearing, §12.85 regarding Preliminary Review Hearing, §12.86 regarding Motions for Continuance, and §12.87 regarding Resolution of Preliminary Review Hearing.

The TEC also proposes the repeal of all rules in Division 1 of Subchapter E of Chapter 12 (relating to Formal Hearing: General Procedures), including §12.101 regarding Application and Construction, §12.102 regarding Order of Formal Hearing, §12.103 regarding Notice of Formal Hearing, §12.117 regarding Formal Hearing: Venue, and §12.119 regarding Resolution after a Formal Hearing.

The TEC also proposes the repeal of all rules in Division 2 of Subchapter E of Chapter 12 (relating to Formal Hearing: Scheduling, Filing, and Service), including §12.121 regarding Prehearing Conferences, §12.123 regarding Scheduling Orders, §12.125 regarding Filing of Documents, and §12.127 regarding Service of Documents.

The TEC also proposes the repeal of all rules in Division 3 of Subchapter E of Chapter 12 (relating to Formal Hearing: Powers and Duties of Commission and Presiding Officer), including §12.131 regarding Powers and Duties of the Presiding Officer, and §12.133 regarding Orders From the Commission.

The TEC also proposes the repeal of all rules in Division 5 of Subchapter E of Chapter 12 (relating to Formal Hearing:

Pleadings and Motions), including §12.151 regarding Required Form of Pleadings, §12.153 regarding Motions, Generally, and §12.155 regarding Motions for Continuance and to Extend Time.

The TEC also proposes the repeal of all rules in Division 6 of Subchapter E of Chapter 12 (relating to Formal Hearing: Hearings and Prehearing Conferences), including §12.161 regarding Time Allotted to Parties, §12.163 regarding Presentation of Evidence, §12.165 regarding Rules of Evidence, and §12.167 regarding Numbering of Exhibits.

The TEC also proposes the repeal of all rules in Division 7 of Subchapter E of Chapter 12 (relating to Formal Hearing: Disposition of Formal Hearing), including §12.171 regarding Standard of Proof, §12.173 regarding Default Proceedings, §12.174 regarding Summary Disposition, and §12.175 regarding Resolution of Formal Hearing.

This proposal, along with the contemporaneous proposal of new Subchapters and Divisions in Chapter 12, amends the rules used in sworn complaint proceedings at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules . . . not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id.*

The TEC started its comprehensive review with the TEC's rules regarding sworn complaint procedures, which are codified in Chapter 12. The repeal of existing rules and adoption of new rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on sworn complaint procedures.

James Tinley, General Counsel, has determined that for the first five-year period the proposed repealed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed repealed rules.

The General Counsel has also determined that for each year of the first five years the proposed repealed rules are in effect, the public benefit will be consistency and clarity in the TEC's rules regarding sworn complaint procedures. There will not be an effect on small businesses, microbusinesses or rural communities. There is no anticipated economic cost to persons who are required to comply with the proposed repealed rules.

The General Counsel has determined that during the first five years that the proposed repealed rules are in effect, they 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 in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The TEC invites comments on the proposed repealed rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repealed rules may do so at any Commission meeting during the agenda item relating to the

proposed repealed rules. Information concerning the date, time, and location of Commission meetings is available by telephoning (512) 463-5800 or on the Commission's website at www.ethics.state.tx.us.

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §§12.5 - 12.7, 12.9, 12.11, 12.13, 12.15, 12.19, 12.21, 12.23, 12.25, 12.27 - 12.31, 12.33 - 12.36

- §12.5. *Deadline for Filing a Complaint.*
- §12.6. *File Date for Purposes of Commission Response Deadline.*
- §12.7. *Confidentiality.*
- §12.9. *Compliance with Open Meetings Law and Open Records Law.*
- §12.11. *Delegation to Executive Director.*
- §12.13. *Representation by Counsel.*
- §12.15. *Appearance of Complainant at Hearing.*
- §12.19. *Agreements to be in Writing.*
- §12.21. *Notice.*
- §12.23. *Hearing in Respondent's Absence.*
- §12.25. *Waiver of Hearing.*
- §12.27. *Deadline Extension.*
- §12.28. *Production of Documents During Preliminary Review.*
- §12.29. *Subpoenas Issued by Commission.*
- §12.30. *Subpoenas Issued by Counsel for the Respondent.*
- §12.31. *Conduct and Decorum.*
- §12.33. *Sanctioning Authority.*
- §12.34. *Agreed Orders.*
- §12.35. *Frivolous Complaint.*
- §12.36. *Assessment of Civil Penalty.*

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SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §§12.51 - 12.53, 12.59, 12.61, 12.67

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.51. *Non-Complying Complaint.*

§12.52. *Response to Notice of Complaint.*

§12.53. *Commission Initiated Complaint.*

§12.59. *Description of Violation.*

§12.61. *Statement of Facts.*

§12.67. *Copies and Documents Provided by the Commission.*

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SUBCHAPTER C. INVESTIGATION AND PRELIMINARY REVIEW

1 TAC §§12.81, §12.83

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.81. *Technical, Clerical or De Minimis Violations.*

§12.83. *Preliminary Review.*

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

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SUBCHAPTER D. PRELIMINARY REVIEW HEARING

1 TAC §§12.84 - 12.87

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.84. *Notice of Preliminary Review Hearing.*

§12.85. *Preliminary Review Hearing.*

§12.86. *Motions for Continuance.*

§12.87. *Resolution of Preliminary Review 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.

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SUBCHAPTER E. FORMAL HEARING DIVISION 1. GENERAL PROCEDURES

1 TAC §§12.101 - 12.103, 12.117, 12.119

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.101. *Application and Construction.*

§12.102. *Order of Formal Hearing.*

§12.103. *Notice of Formal Hearing.*

§12.117. *Formal Hearing: Venue.*

§12.119. *Resolution after a Formal 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.

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DIVISION 2. SCHEDULING, FILING, AND SERVICE

1 TAC §§12.121, 12.123, 12.125, 12.127

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.121. *Prehearing Conferences.*

§12.123. *Scheduling Orders.*

§12.125. *Filing of Documents.*

§12.127. *Service of Documents.*

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DIVISION 3. POWERS AND DUTIES OF COMMISSION AND PRESIDING OFFICER

1 TAC §12.131, §12.133

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.131. *Powers and Duties of the Presiding Officer.*

§12.133. *Orders from the Commission.*

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DIVISION 5. PLEADINGS AND MOTIONS

1 TAC §§12.151, 12.153, 12.155

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.151. *Required Form of Pleadings.*

§12.153. *Motions, Generally.*

§12.155. *Motions for Continuance and to Extend Time.*

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

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James Tinley

General Counsel

Texas Ethics Commission

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For further information, please call: (512) 463-5800



DIVISION 6. HEARINGS AND PREHEARING CONFERENCES

1 TAC §§12.161, 12.163, 12.165, 12.167

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.161. *Time Allotted to Parties.*

§12.163. *Presentation of Evidence.*

§12.165. *Rules of Evidence.*

§12.167. *Numbering of Exhibits.*

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

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DIVISION 7. DISPOSITION OF FORMAL HEARING

1 TAC §§12.171, 12.173 - 12.175

The repealed rules are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The proposed repealed rules affect Subchapter E of Chapter 571 of the Government Code.

§12.171. *Standard of Proof.*

§12.173. *Default Proceedings.*

§12.174. *Summary Disposition.*

§12.175. *Resolution of Formal 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.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER L. LOCAL FUNDS

MONITORING

1 TAC §§355.8701 - 355.8705, 355.8707

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8701, concerning Purpose; §355.8702, concerning Definitions; §355.8703, concerning Applicability; §355.8704, concerning Reporting and Monitoring; §355.8705, concerning Post-Determination Review; and §355.8707, concerning Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).

BACKGROUND AND PURPOSE

The purpose of the proposal is to add and modify definitions and enhance clarity, consistency, and specificity of the rules. The amendments also reflect best practices learned after the completion of two Local Funding reporting periods and are based on an internal review of Local Funding's processes.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8701 replaces "local governmental entities" with "governmental entities;" as noted in the proposed amendment to §355.8702, the term "governmental entities" includes state agencies and "local governmental entities" (LGEs). The proposed amendment also replaces "HHSC" with "HHS" to specify which agencies collect the information to comply with state and federal law and associated reporting requirements.

The proposed amendment to §355.8702 modifies the definition of a governmental entity to distinguish between state agency and other political subdivisions of the state. The proposed amendment also adds two new definitions: Texas Health and Human Services system (HHS) and Local Education Agency (LEA) to conform to the term used by other state agencies to refer to this political subdivision of the state.

The proposed amendment to §355.8703 removes the staggered implementation of the rules, as reporting on all local funding provided to HHSC by governmental entities through Intergovernmental Transfer (IGT) or Certified Public Expenditure (CPE) for use as the non-federal share of Medicaid payments has begun. The proposed amendment also clarifies what HHSC will do if the electronic annual survey is not open at the start of the reporting period to ensure that governmental entities can provide any requested information or documentation relating to annual reporting and monitoring.

The proposed amendment to §355.8704 clarifies the processes HHSC uses to collect information from governmental entities for use in the annual survey as required by the 2024-25 General Appropriations Act, House Bill 1, 88th Legislature, Regular Session, 2023 (Article II, Health and Human Services Commission, Rider 15 (b)). Additionally, the proposed amendment reiterates HHSC's broad authority to refuse IGT used as the non-federal share of Medicaid at its discretion. Finally, the proposed amendment reflects best practices learned after implementing reporting for all funding sources and the completion of two fiscal years' reporting periods. This includes additional specification regarding the types of information and documentation HHSC collects and how HHSC uses the information collected to determine compliance, assess risk, and conduct in-depth reviews.

The proposed amendment to §355.8705 conforms rule reference in this subchapter regarding post-determination reviews. The proposed amendment specifies governmental entity representatives that may request a post-determination review.

The proposed amendment to §355.8707 provides updated and additional detail regarding the steps that a local governmental entity must complete regarding the submission of the required documentation prior to transferring local funds generated by a Local Provider Participation Fund (LPPF) to HHSC via IGT.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will not expand, limit, or repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; are necessary to receive a source of federal funds or comply with federal law; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public benefit will be to ensure Texas meets oversight responsibilities related to the permissibility of local Medicaid funding sources. HHSC's oversight will reduce the potential likelihood of providers' recoupments from the Centers for Medicare & Medicaid Services (CMS), which helps ensure providers continue providing services to Medicaid beneficiaries.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules clarify existing processes for entities to meet the existing requirements of data submission and reporting system training.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to PFD Local Funding, 4601 Guadalupe Street, Mail Code H400, Austin, Texas 78751, or by email to PFD_LFM@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R065" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Human Resources Code §32.031(d), which authorizes the Executive Commissioner to pursue the use of local funds as part of the state share under the Medicaid program as provided by federal law and regulation; and Texas Health and Safety Code §300.0154 and §300A.0154, which require the Executive Commissioner of HHSC to adopt rules relating to LPPF reporting.

The amendments affect Texas Government Code §531.0055; Texas Human Resources Code §32.021 and Texas Government

Code §531.021(a); Texas Human Resources Code §32.031(d); and Texas Health and Safety Code §300.0154 and §300A.0154.

§355.8701. *Purpose.*

(a) As part of the oversight required by federal and state law, the Texas Health and Human Services Commission (HHSC) requires all non-federal share funds that are provided by governmental entities [local governmental entities, including funds transferred or certified by governmental entities] as the non-federal share of Medicaid supplemental and directed payments, to report the source of such funds.

(b) HHSC will use the information reported under this subchapter along with information already collected by HHS [HHSC] to comply with state and federal law and associated reporting requirements. HHSC may publish the information on the HHSC website at HHSC's discretion.

§355.8702. *Definitions.*

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

(1) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid.

(2) Certified Public Expenditure (CPE)--An expenditure certified by a governmental entity to represent its contribution of public funds in providing services that are eligible for federal matching Medicaid funds.

(3) Federal Fiscal Year (FFY)--A 12-month period beginning October 1 and ending September 30.

(4) Governmental entity[Entity]--A governmental entity is defined as: [state agency or a political subdivision of the state, or a hospital authority, hospital district, health district, city, county, school district, or other unit of local government as established by Texas statute.]

(A) a state agency; or

(B) a political subdivision of the state, including a hospital authority, hospital district, health district, city, county, local education agency (as defined in paragraph (10) of this section), or other unit of local government as established by Texas statute; may also be referred to as a Local Governmental Entity (LGE).

(5) Health care provider--The individual or entity that receives a Medicaid payment or payments for health care items or services provided or an entity related to such a health care provider.

(6) HHS--The Texas Health and Human Services system. For the purposes of this subchapter, unless specifically stated otherwise, the HHS system includes HHSC and the Texas Department of State Health Services.

(7) [(6)] HHSC--The Texas Health and Human Services Commission.

(8) [(7)] Interested party--A governmental entity that has non-federal share funds under review, as contemplated by this chapter.

(9) [(8)] Intergovernmental Transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(10) Local Education Agency (LEA)--A Texas independent school district or public charter school.

(11) [(9)] Non-federal share--The portion of Medicaid program expenditures that is not federal funds. The non-federal share is equal to 100 percent minus the federal medical assistance percentage

(FMAP) for Texas for the state fiscal year corresponding to the program year and for the population served.

(12) [(10)] Post-determination review--The informal verification [re-examination] of an action or determination by HHSC under this chapter requested by an interested party.

§355.8703. *Applicability.*

(a) This subchapter applies to local funding provided to HHSC by a governmental entity for use as the non-federal share of Medicaid payments through intergovernmental transfer (IGT) or Certified Public Expenditure (CPE). [the following categories of local funds:]

[(1) beginning April 1, 2022: intergovernmental transfer (IGT) of Local Provider Participation Funds (LPPFs) or other provider taxes;]

[(2) beginning October 1, 2022: in addition to paragraph (1) of this subsection, IGT of funds to support Medicaid payment programs for hospital services (other than funds from LPPFs or other provider taxes);]

[(3) beginning April 1, 2023: in addition to paragraphs (1) and (2) of this subsection, IGT of funds to support Medicaid payment programs for non-hospital services, including nursing facility services, intermediate care facility services, and other acute or long-term care services (other than funds from LPPFs or other provider taxes); and]

[(4) beginning October 1, 2023: in addition to paragraphs (1) - (3) of this subsection, certified public expenditures (CPEs).]

(b) To the extent that an electronic annual survey, detailed in §355.8704 of this subchapter (relating to Reporting and Monitoring), is not [yet] open for reporting at the applicable start date of the reporting period, governmental entities [for a given funding source, governmental entities] will be contacted by HHSC and given 30 days from the date of the notice to provide any requested information or documentation in a format prescribed by HHSC.

§355.8704. *Reporting and Monitoring.*

(a) A governmental entity that provides funds for use as the non-federal share in the Medicaid program must report information to the Texas Health and Human Services Commission (HHSC) in a form and format to be determined by HHSC.

(b) The information must be reported at least annually, no later than October 31 [October 31st], or upon request by HHSC.

(c) HHSC will [open the information reporting system prior to the end of the federal fiscal year and will] review reported information based on governmental entity funding sources, including:

(1) local provider participation funds (LPPFs) authorized by the Texas Health and Safety Code Chapter 288 *et seq.* or other provider tax structures;

(2) non-LPPF provider taxes;

(3) ad valorem tax revenue;

(4) patient revenue;

(5) donations; and

(6) [(5)] other local funding sources.[; and]

[(6) donations.]

(d) HHSC will use the information from the report to monitor each governmental entity's funding sources [governmental entity fund source] and determine the likelihood that the funds are permissible for use in the Medicaid program. The monitoring will include the following:

(1) Survey. An electronic annual survey that will request the following:

(A) a list of all Medicaid programs and health care providers (including name, type, and ownership status) [health care providers] for which the governmental entity transferred or certified funds as the non-federal share;

(B) the relationship between the governmental entity and each [the] health care provider, including a copy of any formal or informal agreements between the governmental entity [entity] and the health care provider [provider];

~~(C) the type of health care provider (i.e. ambulance, dentist, hospital, intermediate care facilities for individuals with an intellectual disability, nursing facility, physician practice group) and ownership status;~~

~~(C) [(D)] the source of the funds used as the non-federal share transferred by the governmental entity;~~

~~(D) [(E)] information on any debt instruments (i.e., bonds, loans, etc.) that a governmental entity utilizes and the relationship of the instrument to any transferred funds;~~

~~(E) [(F)] to the extent patient revenue is used, a description of payor mix (i.e., Medicaid, Medicare, commercial, uninsured, self-pay, etc.) during the federal fiscal year (FFY) and any anticipated changes;~~

~~(F) [(G)] any transfer of funds or provision of services from a health care provider or entity related to a health care provider to the governmental entity, including in-cash or in-kind donations, or any other transfer of value;~~

~~(G) [(H)] overview of funds received from all sources available to the governmental entity during the FFY [in its current fiscal year];~~

~~(H) [(I)] other information as determined necessary and appropriate to determine compliance with federal or state statutes and regulations, including attestations of compliance from the local government; and~~

~~(I) [(J)] any publicly available information, such as:~~

~~(i) [audio] recordings of discussions or written minutes from public meetings to set assessment rates or gather feedback from health care providers [providers] or their representatives;~~

~~(ii) [written] correspondence describing the governmental entity's funding transferred to HHSC for use in [dedicated to] the Medicaid program;~~

~~(iii) [URL] links to websites that describe the funds used [transferred or certified] as the non-federal share or any agreement between the governmental entity and a health care provider or entity related to a health care provider; and~~

~~(iv) copies of any public notices, local orders, announcements, or other related documentation.~~

(2) Risk Assessment.

(A) The risk assessment will include:

(i) a risk assessment score based on self-reported annual survey responses; and

(ii) any adjustments made at HHSC's discretion based on supplemental documentation and discussion with the impacted governmental entity and review of additional documentation

requests as may be needed, in HHSC's sole discretion, to confirm, audit, or modify self-reported data and qualitative descriptions.

(B) The funds used as the non-federal share [Funding sources] will be categorized as likely permissible, further review required, or likely impermissible based on a review of a governmental entity's funding sources. HHSC may elect to [will] contact entities whose funding sources are categorized as further review required or likely impermissible to obtain additional information. The entity must furnish the requested information to HHSC within 10 [ten (10)] business days of the date of the request.

(i) Likely permissible. Funding source appears to comply with federal and state statutes and regulations.

(ii) Further review required. Funding source compliance with federal and state statutes and regulations is unclear.

(iii) Likely impermissible. Funding source does not appear to comply with federal or state regulations.

(3) In-depth Review. HHSC will select a sample of survey respondents for an in-depth review in which HHSC may examine supporting documentation, either on-site or electronically, at HHSC's discretion. HHSC will select a sample of survey respondents sufficient to result in a 95 percent confidence level with a 5 percent margin of error. HHSC will [initially] select entities based on an initial risk assessment, [that are in the likely impermissible and further review required categories,] and if additional entities are necessary to complete the required [a] sample size, they will be randomly selected [from the likely permissible category]. HHSC will notify a governmental entity if an on-site review will occur at least 10 [ten (10)] calendar days prior to the visit.

(4) Determination. HHSC will notify the governmental entity upon determination of the following: [Determination of completeness of reporting and HHSC's assigned risk assessment for each funding source.]

(A) reporting compliance;

(B) risk assessment score;

(C) funding source category pursuant to paragraph (2)(B) of this subsection.

(5) Post-Determination Review. Post-determination review will be conducted as outlined in §355.8705 of this subchapter (relating to Post-Determination Review) [this subchapter].

(6) Federal Reporting.

(e) If a governmental entity fails to submit the required information or supplemental documentation as requested by HHSC by the deadline specified in this section, HHSC may refuse [will not accept] further transfer of funds for any Medicaid program from the governmental entity until the reporting requirement is satisfied and may process recoupments for any payments resulting from funds transferred determined to be non-compliant.

(f) Prior to the applicable deadline, a governmental entity may request an extension of up to 10 [ten (10)] business days for any deadline contained in this subchapter. HHSC may grant or reject such request at its sole discretion.

~~[(g) HHSC will notify the governmental entity upon determination of:]~~

~~[(1) reporting compliance;]~~

~~[(2) permissibility of funds; and]~~

~~[(3) a risk assessment category for each funding source.]~~

(g) [(h)] After review of any additional information provided, HHSC may also seek input on the likely permissibility of the funds from the Centers for Medicare & [and] Medicaid Services (CMS). In the event HHSC elects to request input from CMS regarding the compliance of a specific funding source as contemplated by this subchapter, HHSC will notify the governmental entity prior to requesting such review. HHSC may, at its discretion, accept or reject local funds from any governmental entity [the governmental entity for such funding source while awaiting CMS input]; however, HHSC will reject funding and recoup all Medicaid payments supported by a governmental entity's [generated from a] funding source that CMS deems impermissible if CMS requires HHSC to do so [deemed impermissible by CMS at any time].

(h) If a governmental entity is determined not to have met the reporting requirements, or to have falsified any data in its reporting, HHSC may refuse transfers from the governmental entity, and payments to health care providers resulting from prior transfers may be recouped.

§355.8705. *Post-Determination Review.*

(a) An interested party who disputes a determination under §355.8704(d)(4) [~~§355.8704(g)~~] of this subchapter [chapter] (relating to Reporting and Monitoring) may request post-determination review under this section.

(b) The purpose of a post-determination review is to provide for the informal and efficient resolution of the matter(s) in dispute. A post-determination review is not a formal administrative hearing and is conducted according to the following procedures:

(1) The Texas Health and Human Services Commission (HHSC) must receive a request for a post-determination review electronically to PFD_LFM@hhs.texas.gov no later than 30 calendar days from the date of a notification under §355.8704(d)(4) [~~§355.8704(g)~~] of this subchapter [chapter]. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. HHSC will extend this deadline for an additional 15 days if it receives a request for the extension prior to the initial 30-day deadline. A request for a post-determination review or extension that is not received by the stated deadline will not be accepted.

(2) An interested party must, with its request for a post-determination review, submit a concise statement of the specific determinations it disputes, its recommended resolution, and any supporting documentation the interested party deems relevant to the dispute. It is the responsibility of the interested party to render all pertinent information at the time it submits its request for a post-determination review. A request for a post-determination review that does not meet the requirements of this subparagraph will not be accepted.

(3) The written request for the post-determination review or extension must be requested by an employee, board member, or elected official of the Local Governmental Entity (LGE) [signed by a legally authorized representative for the interested party]. A request for a post-determination review or extension that is not requested by an employee, board member, or elected official of the LGE [a legally authorized representative of the interested party] will not be accepted.

(4) On receipt of a request for post-determination review that meets the requirements of this section, HHSC will:

- (A) acknowledge receipt of the request to the requestor; and
- (B) coordinate the review of the information submitted by the interested party and may request additional information from the

interested party, which must be received no later than 14 calendar days from the date of the written request for additional information.

(i) If the 14th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 14th calendar day is the final day the receipt of the additional information will be accepted.

(ii) Information received after 14 calendar days may not be used in the post-determination review decision unless the interested party requests an extension and receives written approval from HHSC staff to submit the information after 14 calendar days. HHSC must receive a request for an extension to the 14-calendar-day due date prior to the 14th calendar day.

(iii) HHSC may make subsequent requests for additional information. If HHSC makes a subsequent request for additional information, the timeframes for submission and receipt of the information apply just as they applied to the initial request for additional information.

(5) Upon [review and] receipt and review of all requested supplemental information, HHSC will provide a final decision no later than 180 days after receipt of the request or receipt of supplemental information, whichever is later. An interested party may request an update on the status of the post-determination review at any time.

§355.8707. *Notification Requirements for the Creation of a Local Provider Participation Fund (LPPF).*

(a) A local government, as defined in Texas Health and Safety Code Chapter 300, or a district, as defined in Texas Health and Safety Code Chapter 300A, that creates a new local provider participation fund (LPPF) as authorized by those chapters must send HHSC notice of the creation of a new LPPF according to the following procedures.

(1) HHSC must receive notice of a newly created LPPF electronically to PFD_LFM@hhs.texas.gov no later than 10 business days from the date of the local government or district's creation of the LPPF.

(2) The notice must contain the following.

(A) Contact information for at least two employees, board members, or elected officials of the local government or district authorized to implement an LPPF, as well as any individuals the local government or district authorizes to receive informational updates related to LPPF formation and reporting. Contact information shall include:

- (i) full names;
- (ii) titles and description of involvement with the LPPF (if not an employee, board member, or elected official of the local government or district);
- (iii) email addresses; and
- (iv) phone numbers.

(B) Audio recordings of discussions or written minutes from public meetings, such as commissioner's court meetings or hospital district board meetings, that document the approval of LPPF formation and any associated rate setting.

(C) Resolution approving rules and procedures for LPPF mandatory assessment payments.

(D) Resolution authorizing the formation of the LPPF, collection of a mandatory assessment payment, and use of funds from the mandatory assessment payments.

(E) Public notices from a hardcopy or digital source, such as a newspaper article, notifying providers in the jurisdiction of the intent to create an LPPF and set associated rates.

(F) Copies of written notice provided to the chief operating officer of each provider that will be required to pay a mandatory assessment.

(G) Invoices or other records of LPPF mandatory assessments and payments received from providers, if any, have been made at the time notice is provided to HHSC.

(H) Any agreements between the local government or district implementing the LPPF (including a local government that created the district under Texas Health and Safety Code §300A.0021) and a health care provider or entity related to a health care provider that is required to pay a mandatory assessment, if applicable.

(3) On receipt of a notice for the creation of an LPPF, HHSC:

(A) acknowledges receipt of the notice to the local government or district; and

(B) reviews the information submitted by the local government or district.

(i) HHSC may request additional information from the local government or district. The additional information must be received by HHSC no later than 10 business days from the date of the written request for additional information.

(ii) HHSC will extend this deadline for an additional 10 business days if it receives a request for the extension prior to the initial 10 business day due date. A request for an extension that is not received by the stated deadline will not be accepted.

(4) No local government or district may transfer local funds generated by an LPPF to HHSC via intergovernmental transfer (IGT) [IGT] until it has completed the following steps.

(A) Notify HHSC of the creation of the LPPF in accordance with this section and receive acknowledgment of receipt from HHSC.

(B) Provide HHSC documentation that the governmental entity has completed the following: [with any additional information requested by HHSC as provided in this section.]

(i) Established a distinct bank account for the LPPF that is not commingled with other funds of the governmental entity.

(ii) Established a unique TEXNET account for the LPPF through the Texas Comptroller of Public Accounts that allows transfers from only the distinct bank account identified in clause (i) of this subparagraph.

(iii) Emailed PFD Payments@hhs.texas.gov to confirm that the bank account HHSC has on file for issuing LPPF account refunds matches the distinct bank account identified in clause (i) of this subparagraph.

(C) Provide HHSC with any additional information requested by HHSC as provided in this section. [Establish a unique TexNet Account through the Texas Comptroller.]

{(D) Establish a Texas Identifier Number (TIN) through the Provider Finance Department by emailing RAD_Payments@hhs.texas.gov.}

(b) Any local government or district that creates an LPPF is subject to annual reporting requirements under 1 TAC Chapter 355, Subchapter L (relating to Local Funds Monitoring).

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 July 29, 2024.

TRD-202403423

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (737) 867-7877



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER I. PUBLIC FACILITY CORPORATION COMPLIANCE MONITORING

10 TAC §10.1103

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Subchapter I, Public Facility Corporation Compliance Monitoring, §10.1103. The purpose of the proposed amended rule is to provide compliance with Tex. Gov't Code §2306.053. The proposed amended rule codifies requirements on which Public Facility Corporation multifamily residential developments are required to submit audit reports to the Department by June 1 of each year.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program. The proposed amended rule provides an assurance that required monitoring requirements tasked to the Department are clearly relayed to Responsible Parties of Public Facility Corporations and their Sponsors.
2. The proposed amendment to the rule will require a change in the number of employees of the Department; the Compliance Monitoring Division will gain two additional full time employees through 2025.
3. The proposed amendment to the rule will not require additional future legislative appropriations.
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will create a new regulation; which is created and codified because of HB 2071.
6. The proposed amendment to the rule will not repeal an existing regulation; but will expand the existing regulations on this

monitoring activity because the amendment is necessary to ensure ongoing compliance with HB 2071 and for the Department to amend rules to codify monitoring applicability.

7. The proposed amendment to the rule will increase the number of individuals subject to the rule's applicability because the rule is codifying that all Public Facilities Corporations must submit an annual audit to the Department.

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be clarification of the audit report requirements for PFC multifamily residential developments. There will be a nominal economic cost to PFC entities required to comply with the amendment to engage in services with an independent auditor.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities because it applies to all Public Facilities Corporation multifamily residential developments regardless when approved.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from August 9, 2024, through September 9, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email wendy.quackenbush@tdhca.texas.gov. **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, September 9, 2024.**

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§10.1103. Reporting Requirements.

The following reporting requirements apply to all Developments owned by a Public Facility Corporation (PFC), subject to Sections 303.0421 and 303.0425 of the Texas Local Government Code, and not eligible under Section 10(b) or (c) of [to be grandfathered under previous law pursuant to the criteria established by] House Bill 2071, 88th Texas Legislative Session, effective June 18, 2023, (the Act) for continuation of the former law in effect prior to the effective date of the Act. Pursuant to Section 10(d) of the Act, all Developments owned by a PFC as described in Tex. Local Gov't Code §303.0421(a), and with respect to which an exemption is sought or claimed under §303.042(c) - regardless of when the Development was acquired, approved, or occupied - must submit an Audit Report in accordance with §303.0426(b) as described below.

(1) No later than June 1 of each year, the Public Facility User will submit to the Department an Audit Report from an Auditor, obtained at the expense of the Public Facility User. Concurrently with submission of the Audit Report, the Operator will complete the contact information form available on the Department's website. For Developments eligible for continuation of the former law in effect prior to June 18, 2023, the first Audit Report (due no later than December 1, 2024), will satisfy the requirements of Tex. Local Gov't Code §303.0426(b)(1) (compliance with new statutory provisions) by demonstrating its eligibility to continue under the former law, but must still fully address

the requirements of §303.0426(b)(2) (identifying the difference in rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions).

(2) The first Audit Report must include a copy of the Regulatory Agreement. The first Audit Report for a Development must be submitted no later than June 1 of the year following the first anniversary of:

(A) The date of the PFC acquisition for an occupied Development; or

(B) The date a newly constructed PFC Development first becomes occupied by one or more tenants.

(3) No later than 60 days after the receipt of the Audit Report, the Department will post a summary of the Audit Report on its website. A copy of the summary will also be provided to the Development and all Responsible Parties. The summary must describe in detail the nature of any noncompliance.

(4) If any noncompliance with Sections 303.0421 and 303.0425 are identified by the Auditor, no later than 45 days after receipt of the Audit Report the Department will notify the Public Facility User. The notification must include a detailed description of the noncompliance and at least one option for corrective action to resolve the noncompliance. The Public Facility User will be given 60 days to correct the noncompliance. At the end of the 60 days, the Department will post a final report on its website.

(5) If all noncompliance is not corrected within the 60 days, the Department will notify the Public Facility User, appropriate appraisal district, and the Texas Comptroller. The Department will also recommend a loss of tax-exempt status.

(6) The qualification of the Auditor must be submitted with each Audit Report. Qualifications must include experience auditing housing compliance, a current Certified Occupancy Specialist (COS) certification or an equivalent certification, and resume. The Auditor may not be affiliated with or related to any Responsible Parties. Additionally, a current or previous Management Agent that has or had oversight of the Development or is/was responsible for reviewing and approving tenant files does not qualify as an Auditor under these rules.

(7) The Public Facility User may not engage the same individual as Auditor for a particular Development for more than three consecutive years. After the third consecutive Audit Report by the same Auditor, the Public Facility User must engage a new Auditor for at least two reporting years before re-engaging with a prior Auditor.

(8) Audit Reports and supporting documentation and required forms must be submitted to the following email address: pfc.monitoring@tdhca.state.tx.us.

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 July 26, 2024.

TRD-202403373

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 475-3959



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.14

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.14, concerning negotiated rulemaking. Specifically, this repeal will remove a rule that is unnecessary because negotiated rulemaking procedures are laid out in Chapter 2008 of the Texas Government Code.

The Coordinating Board has the authority to repeal this rule under its general rulemaking authority granted by Texas Education Code, Section 61.027.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the repeal of a rule that is unnecessary because negotiated rulemaking procedures are laid out in Chapter 2008 of the Texas Government Code. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rule will not create or eliminate a government program;
- (2) implementation of the rule will not require the creation or elimination of employee positions;
- (3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rule will not require an increase or decrease in fees paid to the agency;
- (5) the rule will not create a new rule;
- (6) the rule will not limit an existing rule;
- (7) the rule will not change the number of individuals subject to the rule; and
- (8) the rule will not affect this state's economy.

Comments on the proposal may be submitted to Kimberly Fuchs, Assistant General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Kimberly.Fuchs@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

The proposed repeal affects Texas Administrative Code, Chapter 1, Subchapter A, Section 1.14, Negotiated Rulemaking.

§1.14. Negotiated Rulemaking.

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 July 29, 2024.

TRD-202403441

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6297



SUBCHAPTER W. OPPORTUNITY HIGH SCHOOL DIPLOMA ADVISORY COMMITTEE

19 TAC §§1.260 - 1.268

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in, Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter W, §§1.260 - 1.268, concerning the Opportunity High School Diploma Advisory Committee. Specifically, these new sections will establish an Advisory Committee to inform the administration and components of the Opportunity High School Diploma.

The Coordinating Board proposes the establishment of the Opportunity High School Diploma Advisory Committee to advise and counsel the Coordinating Board and its governing board on the administration of the Opportunity High School Diploma through ongoing, structured review and recommendation of program components. The proposed new rules provide clarity and guidance around committee membership, meeting cadence, and charges.

Specifically, these new sections will outline the authority and purpose, definitions, membership and officers, duration of the committee, meeting frequency, committee tasks, review requirement, committee recommendations, and the effective date of the rules.

Rule 1.260, Authority and Specific Purposes of the Opportunity High School Diploma Advisory Committee, authorizes the Coordinating Board to adopt rules under Texas Government Code, §2110.0012, and Texas Education Code, chapter 130, subchapter O. It states that the purpose of this new rule is to create an Advisory Committee to advise and counsel the Commissioner and Board on the Opportunity High School Diploma.

Rule 1.261, Definitions, defines words and terms that are key to the understanding and administration of the Advisory Committee.

Rule 1.262, Committee Membership and Officers, outlines the members that will make up the Advisory Committee. It specifies total number of members, eligibility criteria, membership and officer appointments, and term durations.

Rule 1.263, Duration, sets the term for the Advisory Committee and allows for its re-establishment.

Rule 1.264, Meetings, specifies a minimum of one Advisory Committee meeting per year and allows for special meetings to be called by the presiding officer.

Rule 1.265, Tasks Assigned to the Committee, lists the charges placed on the Advisory Committee to provide to the Board and Commissioner including those relating to general administration of the Opportunity High School Diploma, study and recommendations on program components, and identification of funding to help propagate the program. It also allows for additional charges to be issued by the Board or the Commissioner.

Rule 1.266, Requirement to Review, details the process and cadence to be followed by the Advisory Committee to review the Opportunity High School Diploma instructional outcomes, performance expectations, and assessments.

Rule 1.267, Recommendations, instructs the Advisory Committee to provide recommendations to the Board and Commissioner that help improve the Opportunity High School Diploma program.

Rule 1.268, Effective Date of Rules, states the date when this subchapter becomes effective.

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishing of an Opportunity High School Diploma Advisory Committee to advise and counsel the Texas Higher Education Coordinating Board and its governing board on the administration of the Opportunity High School Diploma through ongoing, structured review and recommendation of program components. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 130.001, which provides the Coordinating Board with the authority to adopt rules and regulations for public junior colleges; and §61.026, granting the Coordinating Board authority to establish advisory committees.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter W.

§1.260. Authority and Specific Purposes of the Opportunity High School Diploma Advisory Committee.

(a) Authority. Statutory authority for this subchapter is provided in Texas Government Code, §2110.0012, and Texas Education Code, chapter 130, subchapter O.

(b) Purposes. The Opportunity High School Diploma Advisory Committee is created to provide the Commissioner and Board with advice and counsel with respect to the opportunity high school diploma program to achieve the goal of providing alternative means for students enrolled in a workforce education program at a junior college to earn a competency-based high school diploma.

§1.261. Definitions.

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

(1) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Coordinating Board--Unless context indicates otherwise, the agency known as the Texas Higher Education Coordinating Board and staff employed by the agency to carry out assigned duties of the agency.

§1.262. Committee Membership and Officers.

(a) Membership shall consist of individuals with knowledge of high school completion competencies.

(b) Membership on the committee shall not exceed seven and should include:

(1) One member from the Texas Workforce Commission, as designated by the Executive Director of the Commission, and

(2) One member from the Texas Education Agency, as designated by the Commissioner of Education.

(c) The Commissioner shall recommend members to the Board for appointment.

(d) The Commissioner shall select the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board and the Commissioner.

(e) Each member shall serve a three-year staggered term, unless otherwise provided by the Commissioner.

§1.263. Duration.

The committee shall continue until October 31, 2028, and may be reestablished by the Board.

§1.264. Meetings.

The committee shall meet at least once a year. Special meetings may be called as deemed appropriate by the presiding officer.

§1.265. Tasks Assigned the Committee.

Tasks assigned to the committee include:

(1) Provide counsel to the Board and Commissioner on the administration of the Opportunity High School Diploma program;

(2) Study and make recommendation to the Board and Commissioner on the instructional outcomes and performance expectations;

(3) Study and make recommendations to the Board and Commissioner on assessments;

(4) Identify funding sources or mechanisms to encourage and facilitate participation in the Opportunity High School Diploma program; and

(5) Any other charges issued by the Board or the Commissioner.

§1.266. Requirement to Review.

The Advisory Committee shall convene a subject matter expert peer group not less than once every three years or as determined by the presiding officer to review the instructional outcomes, performance expectations, and assessments for each of the five core program competencies.

(1) Each peer group shall review the instructional outcomes and performance expectations associated with the core program competency and provide recommendations regarding proposed revisions to the Advisory Committee.

(2) Each peer group shall review the assessments associated with the core program competency and provide recommendations regarding proposed revisions to the approved list of assessments to the Advisory Committee.

§1.267. Recommendations.

The committee shall consider and make recommendations to the Board and Commissioner on policies and rule revisions to improve the Opportunity High School Diploma program.

§1.268. Effective Date of Rules.

This subchapter is effective November 1, 2024.

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 July 29, 2024.

TRD-202403442

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6344



CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION
SUBCHAPTER G. APPROVAL PROCESS FOR NEW DOCTORAL AND PROFESSIONAL DEGREE PROGRAMS

19 TAC §2.143

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter G, §2.143, concerning the approval process for new doctoral and professional degree programs. Specifically, the proposed amendments provide an exception to the one-year waiting period after submitting a planning notification for professional programs if the institution has already received Board approval for the same degree or is acquiring the program from another public, private, or independent institution of higher education. This amendment would permit a faster path toward program approval for a program that has already been previously approved by the Board or is fully-accredited and currently operating. There is a reduced need for long-term planning for a program that is currently in existence or operating. An institution is unlikely to need a full-year to plan because it does not need to create the program, i.e. the program may require modification, but the essential elements required by board rule should already be in place for an approved or operating program.

Texas Education Code, §61.0512, states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval.

David Troutman, Deputy Commissioner for Academic Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

David Troutman, Deputy Commissioner for Academic Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be streamlined approval of professional programs that have met certain criteria. The proposed amendments provide an exception to the one-year waiting period after submitting a planning notification for professional programs if the institution has already received Board approval for the same degree or is acquiring the program from another public, private, or independent institution of higher education. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to David Troutman, Deputy Commissioner for Academic Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Sections 61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Coordinating Board.

The proposed amendments affect Texas Education Code, Sections 61.051 and 61.0512.

§2.143. *Submission of Planning Notification.*

(a) An institution of higher education must submit a Planning Notification to Board Staff in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan)[, at least one year prior to submitting an administratively complete request for a new doctoral or professional degree].

(b) An institution seeking approval for a new doctoral or professional degree program shall submit the required planning notification at least one year prior to submitting an administratively complete request for a new doctoral or professional degree.

(c) An institution seeking approval for a professional degree program meeting one of the following criteria is exempted from the requirement under subsection (b) of this section:

(1) The institution previously received Board approval for the same professional degree program;

(2) The institution is acquiring the proposed professional degree program from another institution of higher of education as defined in Texas Education Code, §61.003(8), and the program is currently accredited and previously received Board approval; or

(3) The institution is acquiring the proposed professional degree program from another private or independent institution of higher of education as defined in Texas Education Code, §61.003(15), and the program is currently fully accredited and in good standing with its institutional accreditor and discipline-specific accreditor, as applicable.

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 July 29, 2024.

TRD-202403443

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6431



CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC

COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §§5.120 - 5.122

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning the purpose and authority, definitions, and submission of a strategic plan for achieving recognition as a research university. Specifically, this repeal will remove these rules from Chapter 5 with the intent to place them in Chapter 15, Research Funds, to group rules related to research. The Coordinating Board intends to adopt a separate forthcoming subchapter relating to the submission of the required strategic plans and update the rules for clarity for the institutions.

The Coordinating Board has statutory authority to adopt rules relating to the submission of long-term strategic plans for research or emerging research universities under Texas Education Code, Section 51.358.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to improve readability of the rules through reorganization, by categorizing rules related to research programs in a forthcoming separate subchapter. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 51.358, which provides the Coordinating Board with the authority to adopt rules to administer the submission of long-term strategic plans for research or emerging research universities.

The proposed repeal affects Texas Education Code, Section 51.358.

§5.120. *Purpose and Authority.*

§5.121. *Definitions.*

§5.122. *Submission of a Strategic Plan for Achieving Recognition as a Research University.*

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 July 29, 2024.

TRD-202403444

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6344



CHAPTER 12. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

SUBCHAPTER A. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

19 TAC §§12.3, 12.5, 12.7, 12.8, 12.10 - 12.12

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments and new sections in Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, §§12.3, 12.5, 12.7, 12.8, and 12.10 - 12.12, concerning the Opportunity High School Diploma program. Specifically, these amendments will provide additional information and guidance on program components, institutional requirements, and administration of the program.

The Coordinating Board proposes amendments to the Opportunity High School Diploma program rules to provide additional guidance regarding the program application and approval processes for institutions seeking to offer the Opportunity High School Diploma program; detail the instructional outcomes and performance expectations for the five competencies listed in §12.5(c) of this subchapter; provide clarity on the approval and publishing of assessments to determine student achievement; list institutional reporting requirements; establish ongoing review and revision of the program; and outline program revocation guidelines.

Rule 12.3, Definitions, is amended to add definitions for Application and Career and Technical Education, and to update the definition for Public School District.

Rule 12.5, Program Requirements, is amended to clarify the type of career and technical education programs that are permissible for concurrent enrollment purposes. The amendment also specifies where the required instructional outcomes and performance expectations for each of the five core program competencies will be detailed and establishes the approved assessments.

Rule 12.7, Program Approval Process, is amended to provide additional information on the application process that eligible entities must follow to qualify for consideration to offer the Opportunity High School Diploma. The amendment also notes that the maximum number of program approvals shall not exceed what is set forth in Texas Education Code, §130.454(c).

Rule 12.8, Required Reporting, is amended to detail the required reporting a participating public junior college will have to submit to the Coordinating Board including data and information requirements, additional reports, and report submission schedule.

Rule 12.10, Approval of a Request to Deliver an Opportunity High School Diploma Program, details the approval process that the Coordinating Board must follow once an application to offer an Opportunity High School Diploma program has been received. It sets forth a timeline for Assistant Commissioner and Commissioner approval, denial, or allowance for an institution to address deficiencies in a proposed diploma program. The rule also outlines an appeals process and respective timeline for denied applications and sets forth an implementation period for approved programs.

Rule 12.11, Program Review and Revision, instructs the Coordinating Board to convene the Opportunity High School Diploma Advisory Committee no less than one time per year to review and recommend revisions to the instructional outcomes, performance expectations, and assessments. It details where the Coordinating Board shall list approved revisions and instructs approved colleges to update or revise their programs accordingly and provide documentation of such within ninety days.

Rule 12.12, Revocation of Authorization, states the Commissioner's authority to revoke a college or consortium's authorization to offer an Opportunity High School Diploma. It lists the factors that can lead to revocation, sets a requirement for a written notice of proposed revocation or revocation status, grants the right to a hearing and details the process and timelines for such, and allows for appeal of a revocation to the Board.

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adopting this rule will be additional clarity on the application, approval, reporting, and revocation processes for public junior colleges seeking to offer, or approved to offer, the Opportunity High School Diploma program; increased detail on pro-

gram components such as instructional outcomes, performance expectations, and approved assessments to determine student achievement; and actions relating to the review and revision of the program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at rulescomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new sections are proposed under Texas Education Code, Section 130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Opportunity High School Diploma Program.

The proposed amendments and new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, Sections 12.3, 12.5, 12.7, 12.8, and 12.10 - 12.12.

§12.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Application--An approved form adopted by the Commissioner that an institution shall use to seek approval to offer the Opportunity High School Diploma program.

(2) [(4)] Board--The [the] governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) Career and Technical Education Certificate--A post-secondary credential, other than a degree, which a student earns upon successful completion of a career and technical education (CTE) workforce or continuing education program offered by an institution of higher education.

(4) [2] Commissioner--The Commissioner of Higher Education.

(5) [(3)] Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(6) [(4)] General Academic Teaching Institution or General Academic Institution--Any college, university, or institution so classified in Texas Education Code, §61.003(3), or created and so classified by law.

(7) [(5)] Nonprofit Organization--Nonprofit means the entity, usually a corporation, is organized for a nonprofit purpose and designated as a 501(c)(3). This designation means a nonprofit organiza-

tion that has been recognized by the Internal Revenue Service as being tax-exempt by virtue of its charitable programs.

(8) [(6)] Opportunity High School Diploma Program, Opportunity Diploma Program, or Program--Unless context indicates otherwise, means the Opportunity High School Diploma Program established under this subchapter.

(9) [(7)] Public Junior College--A public institution of higher education as defined in Texas Education Code, §61.003(2).

(10) [(8)] Public School District--A public school district is a local governmental entity created in accordance with the laws of the state of Texas having the primary responsibility for implementing the state's system of elementary and/or secondary education [geographical unit for the local administration of elementary or secondary schools. It is a special-purpose government entity that can be administered independently or be dependent on the local government, such as a city or county].

§12.5. Program Requirements.

(a) General Requirements. The Opportunity High School Diploma Program is an alternative competency-based high school diploma program to be offered for concurrent enrollment to an adult student without a high school diploma who is concurrently enrolled in a career and technical education program at a public junior college. The program may include any combination of instruction, curriculum, internships, or other means by which a student may attain the knowledge sufficient to adequately prepare the student for postsecondary education or additional workforce education.

(b) A student shall be concurrently enrolled in a program that is defined as a CTE certificate in §2.262 of this title (relating to Certificate Titles, Length, and Program Content), other than a Level 2 Certificate, Enhanced Skills Certificate, or an Advanced Technical Certificate.

(c) [(b)] Curricular Requirements. An approved public junior college shall embed required instructional outcomes and performance expectations [~~the following baseline student learning outcomes~~] in the program. A public junior college may also add curricular elements designed to meet regional employers' needs or specific workforce needs. Required instructional outcomes and performance expectations are detailed at <https://reportcenter.highered.texas.gov/contracts/opportunity-high-school-diploma-instructional-outcomes-and-performance-expectations/> for the five core program competencies. Core program competencies shall include:

(1) Quantitative Reasoning, including the application of mathematics to the analysis and interpretation of theoretical and real-world problems to draw relevant conclusions or solutions.

(2) Communication Skills, including reading, writing, listening, speaking, and non-verbal communication.

(3) Civics, including the structure of government, processes to make laws and policies, constitutional principles of checks and balances, separation of powers, federalism, and rights and responsibilities of a citizen.

(4) Scientific Reasoning, including problem-solving that involves forming a hypothesis, testing the hypothesis, determining and analyzing evidence, and interpreting results.

(5) Workplace Success Skills, including dependability, adaptability, working with others, initiative, resilience, accountability, critical thinking, time management, organizing, planning, problem-solving, conflict resolution, and self-awareness.

(d) [(e)] Prior Learning and Program Completions. A public junior college approved to offer this program shall [~~must~~] determine

each student's competence in each of the five core program competencies set out in subsection (c) [(b)] of this section prior to enrolling the student in the program of instruction and upon the student's completion of the program of instruction.

(1) The program of instruction assigned to each student will be based on the student's prior learning and assessments of the student's competencies for each of the five core program competencies set out in subsection (c) of this section. An institution may determine that a [A] student has [may be determined to have] satisfied required learning outcomes for one or more core program competencies based on the student's prior learning.

(2) An institution may use any of the following methods as documentation [Documentation] of a student's prior learning in the five core program competencies: [may include the following: transcribed high school grades; transcribed college credit; achievement on a national standardized test such as the SAT or ACT; credit earned through military service as recommended by the American Council on Education; or demonstrated success on pre-program assessments.]

(A) transcribed high school grades;

(B) transcribed college credit;

(C) achievement on a national standardized test such as the SAT or ACT;

(D) credit earned through military service as recommended by the American Council on Education; or

(E) demonstrated success on pre-program assessments.

(3) The Commissioner shall identify, consider, and approve assessments, in consultation with the Texas Workforce Commission, to be used by a public junior college to determine a student's successful achievement of the five core program competencies and completion of the program.

(4) Assessments approved by the Commissioner are listed in Figure 1 [The Coordinating Board will publish a list of the approved assessments on the agency's website].

Figure: 19 TAC §12.5(d)(4)

(5) A public junior college that is approved to offer the program shall [must] use an approved assessment to evaluate each student's competence in the five core program competencies as required under subsection (c) [(b)] of this section.

(e) Instructional Outcomes. A public junior college that is approved to offer the program shall embed the required instructional outcomes into their curriculum as required under subsection (c) of this section.

(f) Performance Expectations. A public junior college that is approved to offer the program shall embed the performance expectations into their curriculum as required under subsection (c) of this section.

(g) [(d)] Location of Program. Subject to approval under this subchapter, a public junior college may enter into agreement with one or more public junior colleges, general academic teaching institutions, public school districts, or nonprofit organizations to offer this program. The public junior college may offer this program at any campus of an entity subject to an agreement to offer this program.

(h) [(e)] Award of High School Diploma. A public junior college participating in the program shall award a high school diploma to a student enrolled in this program if the student satisfactorily completes an approved assessment that provides evidence of competence in the five core program requirements as required under this rule. A

high school diploma awarded under this program is equivalent to a high school diploma awarded under Texas Education Code, §28.025.

§12.7. Program Approval Process.

(a) Application Process. An eligible entity shall complete and submit an application to the Coordinating Board. Each application must:

(1) Be submitted electronically in a format and location specified in the application;

(2) Adhere to the program requirements specified in rule; and

(3) Be submitted on or before the day and time specified in the application.

(b) [(a)] Required Elements of Program Approval Application. Unless otherwise specified in the application, an [An] eligible public junior college must submit the following elements in a complete application for approval to offer this program:

(1) A description of the program's design demonstrating compliance with program requirements listed under §12.5 of this subchapter (relating to Program Requirements), including the assessment to be used under §12.5(d)(4) [§12.5(e)(3)] of this subchapter.

(2) Documentation of consultation with local employers and Workforce Development Boards in development of the program's curriculum.

(3) For public junior colleges proposing to offer the program in consortium with one or more partners under §12.6(a)(2) of this subchapter (relating to Eligible Institutions and Students):

(A) a memorandum of agreement with each member of the consortium; and

(B) a description of the role that each member of the consortium will play in delivery of the Program.

(c) [(b)] Process for Approval.

(1) An eligible public junior college may submit an application to participate in the Opportunity High School Diploma Program to the Coordinating Board. The Coordinating Board will review submitted applications for completeness of the elements required under §12.5 of this subchapter.

(2) The Commissioner shall review the staff recommendation and any input by other entities and make the determination whether to approve the program.

(3) The Commissioner may not approve more than the number of public junior colleges or consortia set forth in Texas Education Code, §130.454(c), to offer the Opportunity High School Diploma Program.

(4) [(3)] The Coordinating Board shall notify the public junior college of program approval and post a list of approved programs on the Coordinating Board website.

§12.8. Required Reporting.

(a) Each participating public junior college or consortia approved to offer this program shall report to the Coordinating Board via a form and on a schedule approved by the Commissioner for data collection required under this section [student enrollments and completions to the Coordinating Board through the Education Data System, in compliance with the data reporting standards established for that system]. Each participating public junior college shall provide disaggregated data and information including, but not limited to, the following:

(1) Student enrollment data;

(2) Student completion data; and

(3) Any other data or attributes as determined by the Commissioner.

(b) Each participating public junior college or consortia approved to offer this program shall provide any additional reports certified in accordance with Coordinating Board data reporting requirements.

(c) [(b)] The Board shall submit to the Legislature a progress report on the effectiveness of this program and recommendations for legislative or other action no later than December 1, 2026.

§12.10. Approval of a Request to Deliver an Opportunity High School Diploma Program.

(a) An institution shall submit an application prior to offering an Opportunity High School Diploma program.

(b) The Assistant Commissioner will make the determination of administrative completeness of the application in accordance with §12.5 and §12.7 of this subchapter (relating to Program Requirements and Program Approval Process, respectively) within sixty days of receiving the application. In this subchapter, Assistant Commissioner means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(c) The Assistant Commissioner may allow an institution the opportunity to cure deficiencies in the proposed program application prior to making a recommendation to the Commissioner.

(d) The Assistant Commissioner will make a recommendation to the Commissioner to:

- (1) Deny the proposed diploma program; or
- (2) Approve the proposed diploma program.

(e) If the Assistant Commissioner recommends denial of approval, the institution may appeal that decision to the Commissioner in writing with all supporting documents within sixty days of notice of the denial of approval.

(f) The Commissioner may, within sixty days of receiving a recommendation for approval from the Assistant Commissioner or an appeal from an institution, and at his or her sole discretion:

- (1) Determine if the application is complete and meets the requirements set out in this subchapter; and
- (2) Approve the proposed diploma program; or
- (3) Deny the proposed diploma program.

(g) Decisions by the Commissioner regarding appeals are final and not subject to further appeal.

(h) An institution shall implement an approved new Opportunity High School Diploma program within twelve months of the implementation date stated in the Coordinating Board approval letter or approval is withdrawn. The Commissioner may give one twelve-month extension of approval if an institution demonstrates good cause for the additional time and the delay will not harm students.

§12.11. Program Review and Revision.

(a) The Coordinating Board shall convene the Opportunity High School Diploma Advisory Committee not less than annually to review the instructional outcomes, performance expectations, and assessments for each of the five core program competencies.

(b) The Advisory Committee shall recommend revisions to the instructional objectives, performance expectations, and assessments to the Commissioner.

(c) The Commissioner shall consider the Advisory Committee's recommendations.

(1) Upon approval by the Commissioner, the revised instructional outcomes and performance expectations pertaining to §12.5(c) of this subchapter (relating to Program Requirements) shall include the date of approval and be posted at <https://reportcenter.highered.texas.gov/contracts/opportunity-high-school-diploma-instructional-outcomes-and-performance-expectations/>.

(2) Upon approval by the Commissioner, the revised list of assessments pertaining to §12.5(d)(4) of this subchapter shall include the date of approval and be detailed in Figure 1 of this subchapter.

(d) A public junior college approved to offer the Opportunity High School Diploma shall update or revise its program as necessary to meet any approved revisions and provide documentation to Coordinating Board of such revisions within ninety days of the effective date.

§12.12. Revocation of Authorization.

(a) The Commissioner may revoke authorization of an Opportunity High School Diploma program based on the following factors:

- (1) noncompliance with application and/or the provisions of this subchapter;
- (2) lack of program success as evidenced by reports; or
- (3) failure to provide accurate, timely and complete information as required by §12.10 of this subchapter (relating to Approval of a Request to Deliver an Opportunity High School Diploma Program).

(b) The Commissioner shall provide written notice of a proposed revocation, including the reason or reasons for the proposed revocation.

(1) An institution offering an approved Opportunity High School Diploma program has thirty days to request a hearing on the proposed revocation. Such hearing request shall be submitted in writing and include copies of any documents that support the hearing request. A hearing shall be scheduled not later than sixty days from the date of Coordinating Board receipt of the hearing request, unless otherwise agreed.

(2) The Commissioner will provide written notice of the proposed revocation no later than thirty days from the date of the hearing, or if no hearing is requested once the period to request a hearing has elapsed. Such notice shall provide for a reasonable period for students currently enrolled in the Opportunity High School Diploma program to be taught-out.

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

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TRD-202403445

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6344



CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.302 - 13.305

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter M, §§13.302 - 13.305, concerning Total Research Expenditures. Specifically, this amendment will make clarifying amendments to the reporting of total research expenditures to the Coordinating Board for use in state research funding allocations for the Comprehensive Research Fund, National Research Support Fund, Texas University Fund (TUF), and certain health related institution funding formulas (e.g., research enhancement formula and certain mission specific performance based research formulas). The rules will provide direction to general academic teaching institutions with a health related institution that submit a singular annual financial report on how to allocate their research expenditures. The Coordinating Board used negotiated rulemaking to develop these proposed rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 13.302, Definitions, lists definitions pertinent to research expenditure reporting. The addition of paragraph (10), "Health Related Institutions," adds a more commonly used term for this category of institutions, improving the readability of the rule, using this term throughout the rules in place of "medical and dental units."

Paragraph (11), "Institutional Fund Expenditures," adds additional detail on Institutional Fund Expenditure sources (tobacco settlement receipts and patient income) and removes language about unrecovered indirect costs. This had been included to align reporting with the National Science Foundation Higher Education Research and Development survey. However, due to institutions' concerns about disclosure of information that could be confidential under state or federal law, the amendment deletes the mandatory collection of data on unrecovered indirect cost.

Paragraph (15), "Private Expenditures," removes language about ineligible expenditures because this is addressed in the research expenditure survey definition in paragraph (19).

Revisions to paragraphs (16), "Research and Development (R&D)," and (18), "Research Expenditures or Expenditures," clarify the language but do not change the meaning.

The amendments to paragraph (19), "Research Expenditures or Expenditures," remove duplicative language, add adjustments for ineligible expenditures, remove unrecovered indirect expenditures, and clarify that the pass-throughs referred to occur in Texas.

A statutory citation is added to paragraph (21), "Sources and Uses Template," for clarity.

Paragraph (23), "State and Local Government Expenditures," is amended to add patient income and its statutory citation because there have been questions about how patient income is categorized.

Paragraph (24), "State of Texas Contracts and Grants," is clarified with the addition of grants to the listing of expenditures in this category.

Rule 13.303, Standards and Accounting Methods for Determining Total Research Expenditures, amendments reorganize the section to clarify that the new subsection (a) applies to all institutions of higher education, replaces expenses with expenditures in all instances, and adds clarifying detail on types of eligible expenditures, such as capital outlay for research equipment. New

subsection (b) applies to the general academic teaching institutions with a health related institution that submit a singular annual financial report and provides detail on how to allocate their research expenditures. This methodology takes into account stakeholder feedback, basing the reporting of research expenditures on the appointment of the investigators, and will go into effect beginning with fiscal year 2025. Subsection (c) is the previous subsection (a) language with no substantive change.

Rule 13.304, Reporting of Total Research Expenditures, removes the word "public," since the statutory definition of institution of higher education is a Texas public institution (Texas Education Code, §61.003(8)).

Rule 13.305, Institutional Reporting of Total Research Expenditures by Funding Source, clarifies certain terms, removes the concept of a "narrow" definition of research and development expenditures, and removes reference to unrecovered indirect costs.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the clarification of reporting of research expenditures. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will or will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@higher.ed.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 62.053, which provides the Coordinating Board with the au-

thority to prescribe standards and accounting methods for determining the amount of total research funds expended.

The proposed amendment affects Texas Education Code Sections 61.0662, 62.053, 62.095, 62.134, 62.1482.

§13.302. *Definitions.*

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

(1) All Other Expenditures--Expenditure [Expenditures] of all other funds not reported under the expenditure categories of Business, Nonprofit Organizations, Institutional Funds, State and Local Government or Federal Expenditures, as defined in this section. All Other Expenditures includes funds from foreign universities, foreign governments, portions of gifts designated for research by the donors (including from the reporting institution's 501(c)(3)), and nonfederal and nonstate funds received from other institutions of higher education.

(2) Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(3) Areas of Special Interest--Major research topics important to the public, or required by statute, as listed in the Research Expenditure Survey.

(4) Board--The governing body of the Texas Higher Education Coordinating Board.

(5) Business Expenditures--Expenditure [Expenditures] of funds from domestic or foreign for-profit organizations.

(6) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(7) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board or [and] the Commissioner.

(8) Federal Expenditures--Expenditure [Expenditures] of funds received by the reporting institution from any agency of the United States government for research and development. These include reimbursements, contracts, grants, and any identifiable amounts spent on research and development from Federal programs including Federal monies passed through state agencies to the reporting institution and federal funds that were passed through to the reporting institution from another institution.

(9) General Academic Teaching Institution--Any public general academic teaching institution as defined in Texas Education Code, §61.003(3).

(10) Health Related Institution--Any medical and dental unit as defined in Texas Education Code, §61.003(5).

(11) [(40)] Institutional Fund Expenditure [Expenditures]-This includes funds expended for R&D that are controlled at the institutional level, such as Available University Fund (AUF), Tobacco Settlement Receipts, patient income (unless defined by Texas Education Code, §51.009(c)), or other funding held locally used for R&D, excluding institution research administration and support. This category includes cost sharing from unrestricted sources (cost sharing from restricted sources should be classified according to the underlying source) and [.] unrestricted funds from the reporting institution's 501(c)(3)[, and unrecovered indirect costs. Unrecovered indirect costs may not exceed the institution's federally negotiated Facilities and Administrative rate].

[(11) Medical and Dental Unit--Any public health related institution as defined in Texas Education Code, §61.003(5).]

(12) Nonprofit Organization Expenditures--Expenditure [Expenditures] of funds from domestic or foreign non-profit foundations and organizations, except universities and colleges.

(13) Other Agency of Higher Education--Any public agency of higher education as defined in Texas Education Code, §61.003(6).

(14) Pass-through to Sub-recipient--Sponsored project funds that are passed from one entity to a sub-recipient. The sub-recipient expends the funds to carry out part of the sponsored project on behalf of the pass-through entity.

(15) Private Expenditures--Expenditure [Expenditures] of funds reported as Business Expenditures, Non-profit Organization Expenditures, and All Other Expenditures. [Amounts exclude R&D expenditures that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.]

(16) Research and Development (R&D)--Research and Development [R&D] activity is creative and systematic work undertaken in order to increase the stock of knowledge "including knowledge of humankind, culture, and society" and to devise new applications of available knowledge. R&D covers three activities: basic research, applied research, and experimental development. R&D does not include public service or outreach programs, curriculum development (unless included as part of an overall research project), or non-research training grants. R&D excludes [does not include] capital projects (i.e., construction or renovation of research facilities).

(17) R&D Training--Activities involving the training of individuals in research techniques are included in R&D, where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(18) Research Expenditures or Expenditures--In a specific fiscal year, expenditure [expenditures] of funds paid out by an institution to support institutional Research and Development activities. Expenditures exclude [do not include] in-kind donations.

(19) Research Expenditure Survey--The mandatory survey instrument administered by the Coordinating Board pursuant to Texas Education Code, §61.0662, that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. [The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities.] The survey includes specific adjustments to account for ineligible R&D expenditures and separately accounts for [unrecovered indirect costs and] pass-through expenditures to other general academic teaching institutions, health related institutions [medical and dental units], or other agencies of higher education in Texas, by funding source.

(20) Research fields--Subject areas for R&D, as listed in the Research Expenditure Survey.

(21) Sources and Uses Template--An annual survey of Texas general academic and health-related institutions, administered by the Coordinating Board pursuant to Texas Education Code, §61.065, and §13.63 of this chapter (relating to Additional Financial Information Reporting), to detail financial information and provide specific information about revenues and expenditures.

(22) Sponsored Projects--Sponsored projects include grants, contracts, cooperative agreements and other legally binding means of transfer under which an entity provides a return benefit to,

or agrees to provide a defined deliverable or complete a specified set of activities for, an external sponsor in exchange for funds. External sponsors are those that are not part of the entity.

(23) State and Local Government Expenditures--Expenditure [Expenditures] of funds received for R&D via appropriations from the state of Texas, including non-formula support items, patient income as defined in Texas Education Code, §51.009(c), and funds received from any state, county, municipality, or other local government entity in the United States, including state health agencies. Expenditures include state funds that support R&D at agricultural and other experiment stations.

(24) State of Texas Contracts and Grants--A subset of State and Local Government Expenditures that includes only expenditures of interagency contracts, contracts with Texas local governments, and other such state funding sources for R&D, including grants.

(25) State of Texas Source Expenditures--A subset of State and Local Government Expenditures that includes only expenditures of funds appropriated by the state of Texas for research, including state appropriated research non-formula support items and research formula funding.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

~~[(a) R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.]~~

(a) [(b)] Research expenditure reporting for all institutions of higher education. Each institution shall reconcile its research expenditures [Research expenses] from the AFR [shall be reconciled] to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenditures [expenses] that do not meet the [narrow] definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey, such as pass-throughs[. Pass-throughs] to other general academic teaching institutions, health related institutions [medical or dental units], and other agencies of higher education in Texas [do not meet the narrow definition of R&D expenditures].

(2) Increase of the AFR total by the amount of recovered indirect costs associated with expenditures [expenses] for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenditures [expenses] or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including recovered indirect costs and capital outlay for research equipment.

(5) Increase of the AFR total to include expenditures, including recovered indirect costs and capital outlay for research equipment [expenses] related to research performed by the agency or institution but reported by [recognized on the AFR of] a separate agency or institution that [who] received and expended the funding. The agency or institution that [who] received and expended the funding but did not perform the research must make a corresponding decrease of its AFR total for this amount. This accounting event is not a pass-through to subrecipient as defined in §13.302(14) of this subchapter (relating to Definitions).

(b) This subsection applies to the general academic teaching institutions with a health related institution that submit a singular annual financial report.

(1) Research expenditures shall be reported separately by the general academic teaching institution and health related institution using a methodology that allocates amounts to the general academic teaching institution and health related institution according to the proportion of the expenditures attributed to the principal investigator and any co-investigators.

(2) The primary appointment of each investigator shall determine to which entity (the general academic teaching institution or health related institution) the investigator's allocated expenditures are assigned and reported.

(3) Subsection (b) of this section will take effect beginning with the reporting of expenditures made during fiscal year 2025.

(c) R&D expenditures for Texas A&M University include consolidated expenditures from Texas A&M University and its service agencies.

§13.304. Reporting of Total Research Expenditures.

(a) The Coordinating Board [staff] shall annually post a report of total research expenditures of all [public] institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research reported by the institutions to the Coordinating Board in the Research Expenditure Survey from reports required by this subsection.

§13.305. Institutional Reporting of Total Research Expenditures by Funding Source.

(a) Each institution [Institutions] shall report all research expenditures on the Research Expenditure Survey using the following categories:

- (1) Federal Expenditures;
- (2) State and Local Government Expenditures;
- (3) Business Expenditures;
- (4) Nonprofit Organization Expenditures;
- (5) Institutional Fund Expenditures; and
- (6) All Other Expenditures.

(b) Each institution [Institutions] shall report State of Texas Source Expenditures and State of Texas Contracts and Grants as subsets of State and Local Government Expenditures.

(c) Each institution [Institutions] shall report the original source of expenditures, unless the institution lacks source information [when possible]. Institutions shall report each category and show adjustments by the amount of R&D expenditures [expenses] that do not meet the [narrow] definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey, as defined in §13.302(19) of this subchapter (relating to Definitions), such as[. Un-recovered indirect costs and] pass-throughs to other general academic teaching institutions, health related institutions [medical and dental units], and other agencies of higher education in Texas [do not meet the narrow definition of R&D expenditures].

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 July 29, 2024.



CHAPTER 15. RESEARCH FUNDS

SUBCHAPTER C. STRATEGIC PLANNING RELATED TO EMERGING RESEARCH AND RESEARCH UNIVERSITIES

19 TAC §§15.50 - 15.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter C, §§15.50 - 15.52, concerning Strategic Planning Related to Emerging Research or Research Universities. Specifically, the new subchapter will replace the repealed Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. The new language will update certain definitions and give authority to the Commissioner to determine the requirements for research strategic plans submitted to the Coordinating Board.

Rule 15.50, Purpose and Authority, describes the purpose and authority of the subchapter.

Rule 15.51, Definitions, defines the terms used in the rule. Revisions update certain definitions to the most current terminology. Paragraph (3) is a new definition for the Coordinating Board to specify distinct actions taken by the agency or staff that are separate from actions taken by the governing board of the Texas Higher Education Coordinating Board. Paragraph (4), Research Strategic Plan, modifies the definition to prescribe that the specifications of the plan are approved by the Commissioner of Higher Education, per the delegation of the Board in rule 15.52(a).

Rule 15.52, Submission of a Strategic Plan for Achieving Recognition as a Research University, describes the process, required minimum elements of a plan, and timing for submission of a research strategic plan. The amendments to previous rule language clarify that the Board delegates authority to the Commissioner to determine the required elements of the plan. The rule prescribes that, at a minimum, the plan must include elements relating to an institution's research enterprise, doctoral programs, and faculty. These elements provide a broad guideline for the Commissioner to then approve additional or more specific requirements for the institutions. By providing the authority for the Commissioner to designate the required elements of the report, the Commissioner may consider current statewide needs and trends rather than maintaining a static list of elements.

The rule prescribes that these elements be approved by the Commissioner by October 1 the year prior to the required submission date, which is set at April 1, 2025. Setting a starting date for the submission of plans and a future schedule within the rule provides clarity for institutions on when the reports are due on a standard timeline.

Emily Cormier, Assistant Commissioner for Funding has determined that for each of the first five years the sections are in effect

there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved clarity on requirements related to research strategic plans. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules or will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 51.358 Long-Term Strategic Plan for Research University or Emerging Research University, which provides the Coordinating Board with the authority to adopt rules for the administration of the section.

The proposed new section affects Texas Education Code, Section 51.358.

§15.50. Purpose and Authority.

(a) The purpose of this subchapter is to require each institution of higher education designated as a research university or emerging research university as designated in the Board's accountability system to have a long-term strategic plan for achieving recognition as a research university or enhancing the institution's reputation as a research university.

(b) This rule is adopted under the authority of Texas Education Code, §51.358.

§15.51. Definitions.

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

(1) Board--The governing body of the Texas Higher Education Coordinating Board.

(2) Commissioner--The Texas Commissioner of Higher Education who serves as the chief executive officer of the agency known as the Texas Higher Education Coordinating Board.

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(4) Emerging Research University--A public institution of higher education designated as an emerging research university under the Board's accountability system.

(5) Governing board--The Board of Regents of a research or emerging research university.

(6) Research Strategic Plan--A document to be prepared by the institution which provides a detailed, long-term plan to show how the institution will achieve or enhance its recognition as a research university. The form, manner, standards, and minimum required content for the report will be prescribed by the Commissioner.

(7) Research University--A public institution of higher education designated as a research university under the Board's accountability system.

§15.52. Submission of a Strategic Plan for Achieving Recognition as a Research University.

(a) The Commissioner shall prescribe the form, length, manner, and minimum required content in guidelines published by the Coordinating Board by October 1 in the year prior to submission.

(b) At a minimum, the guidelines in subsection (a) of this section will require information on the following topics:

(1) A plan to elevate the institutions' research enterprise, including its goals and priorities, collaborations and partnerships, and a discussion of economic impact; and

(2) A plan to increase research funding and productivity, including the role of external funding, research facilities, and commercialization; and

(3) A description of its doctoral programs, including plans for research doctorates, supports for doctoral candidates, and the areas of academic emphasis; and

(4) A plan for faculty recruitment, support, and development.

(c) The governing board of each research or emerging research university shall submit its approved strategic plan to the Coordinating Board by April 1, 2025. Each institution shall submit an updated strategic plan not later than April 1, 2030.

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 July 29, 2024.

TRD-202403447

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6548



CHAPTER 17. RESOURCE PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter A, §17.3, concerning Definitions, to be replaced with forthcoming rulemaking. Specifically, the Coordinating Board intends to adopt a separate rule relating to definitions to reorganize and improve readability and accuracy of the definitions used for resource planning. The Coordinating Board has statutory authority to adopt rules relating to resource planning and facilities under Texas Education Code, §§61.0572 and 61.058.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is to improve readability of the rules through the repeal and subsequent replacement of Chapter 17, Subchapter A, §17.3. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed repeal affects Texas Administrative Code, Chapter 17, Section A, §17.3, Definitions.

§17.3. *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 July 29, 2024.

TRD-202403449

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6548



19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter A, §17.3, concerning Definitions. Specifically, this new rule will provide better organization and readability of definitions pertaining to resource planning.

The new section is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

Changes from existing definitions include the removal of the following definitions:

Educational and General (E&G) Building Replacement Estimate (existing paragraph (11)) and Institution-Wide Building Replacement Estimate (existing paragraph (12)), as these will now be included with the definition for the Building Replacement Estimate Report (as listed below).

Campus Master Plan (existing paragraph (14)), as the current methodology for capturing capital planning is within the Capital Expenditure Plan definition.

Committee (existing paragraph (19)) as the Board no longer has a Committee review facilities projects.

Energy Systems (existing paragraph (27)) as no longer in use.

Project Review (existing paragraph (47)) as the Board does not conduct project reviews.

Proposed rules add the following new definitions:

Paragraphs (8) and (20) specify two distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board and "Coordinating Board," meaning the state agency, including agency staff, as a whole. Separating these terms improves the readability and precision of the rules contained in Chapter 17 and allows the Coordinating Board to make a distinction between actions taken by the governing body and the agency, including agency staff, as a whole.

Paragraph (31), Health-related institution, adds a definition for a health-related institution as defined by Texas Education Code, §61.003(5).

Paragraph (51), Space Projection Model, adds a definition for the Space Projection Model, as it is a required report under rule 17.100(1) and is currently used by the Legislature for formula funding and facilities related purposes. It also is used as a stan-

dard by which a facilities project is reviewed by an institution's Board of Regents.

Proposed amendments to existing definitions include the following:

Paragraph (10), Building Efficiency, and paragraph (52), Space Use Efficiency, amend the definitions of both rules to specify the language use of the word "efficiency", since the term is used in two different ways. Paragraph (10) adds the word "building" to specify that this definition is referring to building efficiency, whereas, paragraph (52) adds the word "efficiency" to clarify that this definition is referring to "space usage efficiency", a report that is a required under rule 17.100(2).

Paragraph (11), Building Replacement Estimate Report, adds more detail as to whom the audience of the report is and how the report is calculated.

Paragraph (12), Campus Condition Report, adds more detail as to whom institutions should provide the report to in accordance with Texas Education Code, §61.05821.

Paragraph (14), Capital Expenditure Plan (MP1), includes an additional project type (information resource project) to match projects as listed in rule 17.101, regarding Institutional Reports.

Paragraph (27), Facilities Audit, redefines the definition of an audit to clarify what is included and the authority reference that audits fall under.

Paragraph (13), Capital Construction Assistance Projects, re-names the former Tuition Revenue Bonds Project to Capital Construction Assistance Projects as provided for in Texas Education Code, §55.111 and §§55.171 - 55.17991.

Proposed changes to the Texas Administrative Code, Chapter 17, Section A, §17.3, also provides subsequent reorganization and renumbering.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of administering the section will be the replacement of nomenclature in existing Chapter 17, Subchapter A, §17.3, with a new §17.3 due to multiple updates and reorganization of existing definitions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Sections 61.0572 and 61.058, which provides the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed new section affects Texas Administrative Code, Chapter 17, Subchapter A, §17.3.

§17.3. Definitions.

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

- (1) Academic Facilities--Facilities used for primary instruction, research, and public service functions of the institution. Academic facilities typically would include classrooms, libraries, administrative and faculty offices, and student and research laboratories.
- (2) Acquisition--To come into possession or control of real property or facilities. This includes the acceptance, purchase, lease-purchase, transfer, or exchange of land or facilities.
- (3) Addition--Expansion or extension of an existing facility that increases its size or capacity.
- (4) Assignable Area of a Building--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned space. This is also referred to as net assignable square feet (NASF).
- (5) Athletic Facilities--Facilities used for athletic programs, including intercollegiate athletics, intramural athletics, and athletically oriented academic programs.
- (6) Auditorium or Assembly--A room, hall, or building designed and equipped for the assembly of large groups for such events as dramatic and musical productions, devotional activities, livestock judging, faculty/staff meetings, or commencement. Included are theaters, concert halls, arenas, chapels, and livestock judging pavilions. Assembly facilities may also serve instructional purposes to a minor or incidental extent.
- (7) Auxiliary Enterprise Buildings or Space--Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes. Auxiliary space is not supported by state appropriations.
- (8) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.
- (9) Building--A structure with at least two walls for permanent or temporary shelter of persons, animals (excluding animal caging

equipment), plants, materials, or equipment that is attached to a foundation, roofed, serviced by a utility (exclusive of lighting), is a source of maintenance and repair activities, and is under the control or jurisdiction of the institution's governing board, regardless of its location.

(10) Building Efficiency--The proportion of the gross square feet that can be assigned. This is determined by dividing the net assignable square feet by the gross square feet of a building.

(11) Building Replacement Estimate Report--A report that provides an overall estimate of the campus' buildings replacement cost. The Coordinating Board produces this report to aid institutions in reporting their deferred maintenance needs as a percentage of the total campus' replacement value to the Board of Regents. Building Replacement Estimates are calculated for Educational and General space and Institution-Wide space. A twenty-five percent add-on is included to account for the cost of necessary infrastructure. These are not to be used for insurance purposes.

(12) Campus Condition Report--A report outlining facility maintenance needs in the areas of deferred maintenance and critical deferred maintenance. Institutions are to provide this report to their Board of Regents, and a copy is to be provided to the Coordinating Board.

(13) Capital Construction Assistance Project--A project for which an institution has legislative authority to finance a construction, renovation, or land acquisition project as provided for in Texas Education Code, §§55.111 and §§55.171 - §55.17991.

(14) Capital Expenditure Plan (MP1)--A detailed formulation of institutional programs to address repairs, renovations, deferred maintenance, critical deferred maintenance, facilities construction, demolition, property acquisitions, major information resources projects, or infrastructure.

(15) Certification--Institutional attestation of reports or other submissions as being true as represented.

(16) Classroom--A room used for scheduled classes. These rooms may be called lecture rooms, lecture-demonstration rooms, seminar rooms, or general-purpose classrooms. A classroom may contain multimedia or telecommunications equipment, such as those used for distance learning. A classroom may be furnished with special equipment (e.g., globes, maps, pianos) appropriate to a specific area of study. A classroom does not include a conference room, meeting room, auditorium, or class laboratory.

(17) Class Laboratory--A room used primarily by regularly scheduled classes that require special-purpose equipment for student participation, experimentation, observation, or practice in a field of study. Class laboratories may be referred to as teaching laboratories, instructional shops, computer laboratories, drafting rooms, band rooms, choral rooms, group studios. Laboratories that serve as individual or independent study rooms are not included.

(18) Clinical Facility--A facility often associated with a hospital or medical school that is devoted to the diagnosis and care of patients in the instruction of health professions and allied health professions; medical instruction may be conducted, and patients may be examined and discussed. Clinical facilities include patient examination rooms, testing rooms, and consultation rooms.

(19) Commissioner--The Texas Commissioner of Higher Education who serves as the chief executive officer of the agency known as the Texas Higher Education Coordinating Board.

(20) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(21) Cost--The portion of the total project costs that are reported by the institution as being for the actual cost of construction, repair/renovation, or the actual purchase price for improved real property purchases. Not included are costs associated with site acquisition (for construction projects), closing costs (for improved real property purchases) fixed equipment, site development, furniture and moveable equipment, construction services, life safety compliance, professional services fees, demolition costs, eminent domain costs, environmental development, or contingency amounts.

(22) Critical Deferred Maintenance--Any deferred maintenance that if not corrected in the current budget cycle places its building occupants at risk of harm or the facility at risk of not fulfilling its functions.

(23) Deferred Maintenance--The accumulation of facility components in need of repair or replacement brought about by age, use, or damage, for which remedies are postponed or considered backlogged, that is necessary to maintain and extend the life of a facility. This includes repairs postponed due to funding limitations.

(24) Educational and General (E&G) Space--Space used for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned. E&G space may be supported by state appropriations.

(25) E&G Cost--E&G Space/Total Space x Cost. The costs associated with the E&G space included in a project. This is determined by dividing the E&G assignable square feet by the total project assignable square feet and then multiplying the result by the cost.

(26) Energy Savings Performance Contract--A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the conservation measures is guaranteed to offset the cost of the measures over a specified period.

(27) Facilities Audit--An audit of an institution of higher education's facilities inventory records and submission of required facilities development projects as required by Texas Education Code, §61.0583.

(28) Facilities Inventory--A collection of building and room records that reflects institutional space and how it is being used. The records contain codes that are uniformly defined by the Board and the United States Department of Education and reported by the institutions on an ongoing basis to reflect a current facilities inventory. The facilities inventory includes a record of property owned by or under the control of the institution.

(29) Gift--A donation or bequest of money or another tangible item, a pledge of a contribution, or the acquisition of real property or facilities at no cost to the state or to the institution. It may also represent a method of finance for a project.

(30) Gross Square Feet (GSF)--The sum of all square feet of floor areas within the outside faces of a building's exterior walls. This includes the areas, finished and unfinished, on all floors of an enclosed structure, i.e., within the environmentally controlled envelope, for all stories or areas which have floor surfaces.

(31) Health-Related Institution--A medical or dental unit as defined by the Texas Education Code, §61.003(5).

(32) Improved Real Property--Real property on which there are buildings or facilities.

(33) Information Resource Project--Projects related to the purchase or lease-purchase of computer equipment, purchase of com-

puter software, purchase or lease-purchase of telephones, telephone systems, and other telecommunications and video-teleconferencing equipment.

(34) Infrastructure--The basic physical structures needed for the operation of a campus to include roads, water supply, sewers, power grids, telecommunications, and so forth. Systems within five feet of a building are considered building systems and are not infrastructure.

(35) Institution or Institution of Higher Education--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8), except a community/junior college.

(36) Lease--A contract by which real estate, equipment, or facilities are conveyed for a specified term and for a specified rent. Includes the transfer of the right to possession and use of goods for a term in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.

(37) Lease-Purchase--A lease project that includes the acquisition of real property by purchase, gift, or any other voluntary transaction at some future time.

(38) Legislative Authority--Specific statutory authorization.

(39) Mixed Use--Facilities that have a mixture of uses. These may include facilities that are E&G and non-E&G.

(40) Net Assignable Square Feet (NASF)--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned areas. NASF includes auxiliary space and E&G space.

(41) New Construction--The creation of a new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add gross square footage to an institution's existing space.

(42) Parking Structure--A facility or garage used for housing or storing vehicles. Included are garages, boathouses, airport hangars, and similar buildings. Barns or similar field buildings that house farm implements and surface parking lots are not included.

(43) Phased Project--A project that has more than one part, each one having fixed beginning and ending dates, specified cost estimates, and scope. Phased projects consider future phase needs in the project plan; each phase is able to stand alone as an individual project.

(44) Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(45) Purchase--The acquisition of and interest in real property in exchange for valuable consideration.

(46) Real Property--Land with or without improvements such as buildings.

(47) Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(48) Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(49) Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(50) Space Need--The result of the comparison of an institution's actual space to the predicted need as calculated by the Space Projection Model.

(51) Space Projection Model--An assessment of space needs at institutions of higher education based on factors such as semester credit hours, programs, level of instruction, faculty, and E&G and research expenditures.

(52) Space Use Efficiency--A report that determines the efficiency of space use in existing classrooms and class labs as determined by an institution's performance in three areas: facilities demand, utilization, and average percent fill.

(53) Standard--Basis, criteria, or benchmark used for evaluating the merits of a project or an institutional comparison to a benchmark.

(54) Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(55) Unimproved Real Property--Real property on which there are no buildings or facilities.

(56) University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

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 July 29, 2024.

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6548



SUBCHAPTER B. REPORTING REQUIREMENTS

19 TAC §17.20, §17.21

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, §17.20 and §17.21, concerning Reporting Requirements. Specifically, the proposed amendment will clarify terminology used in this subchapter and align the rule more closely with statute and practice.

Rule 17.20(a) and (b) and rule 17.21(1), (2), and (4) add the term "Coordinating" before the existing nomenclature of "Board"

to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This amendment clarifies the roles and responsibilities of each entity in rule.

Rule 17.20(a)(3) updates the property purchases reporting threshold from \$1 million to \$5 million to align with the reporting threshold update established in Section 11.03 of the FY 2024-25 General Appropriations Act.

Rule 17.21, Submission Procedures, is amended by removing "and the project complies with applicable state and federal requirements as listed on the form," since the authority to approve a facilities project rests with an institution's Board of Regents under Texas Education Code, Chapter 51, Subchapter T. The Coordinating Board's authority rests in a permissive review of purchases of improved real property (Texas Education Code, §61.0572(d)) and construction, repair, or rehabilitation of buildings and facilities (Texas Education Code, §61.058(b)). The Coordinating Board currently does not review these projects and solely collects data on the facilities projects at institutions of higher education.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole and updates to facility submission requirements. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The proposed amendments affect the reporting threshold for improved real property purchases and align Coordinating Board referencing language in congruency with other Board rules.

§17.20. *Facility Projects to Be Submitted to the Coordinating Board.*

(a) Institutions shall submit data on the following projects to the Coordinating Board:

(1) New construction of building and facilities and/or additions to buildings and facilities having an E&G project cost of \$10 million or greater;

(2) Repair and renovation projects for buildings and facilities having an E&G project cost of \$10 million or greater;

(3) Improved real property purchases that the institution intends to include in the E&G buildings and facilities inventory if the purchase price is more than \$5,000,000 [~~\$1,000,000~~];

(4) Energy Savings Performance Contract projects; and

(5) Projects financed by Capital Construction Assistance Projects pursuant to Texas Education Code, §61.0572 and §61.058.

(b) Projects not specifically described in this rule, including but not limited to the following types of projects, are EXEMPT from Coordinating Board submission.

(1) Projects at The University of Texas at Austin, Texas A&M University, and Prairie View A&M University financed more than 50 percent with Permanent University Fund bond proceeds or Available University Fund funds;

(2) New Construction, repair, or rehabilitation of privately-owned buildings and facilities on land leased from an institution if the new construction, repair, or rehabilitation is financed entirely from funds not under the control of the institution;

(3) Gifts, grants, or lease-purchase arrangements intended for clinical or research facilities;

(4) New construction, repair, or rehabilitation projects to be undertaken pursuant to specific legislative authority;

(5) Lease of property or facilities;

(6) Acquisitions of unimproved real property;

(7) Acquisitions of improved real property that the institution does not intend to include in its E&G buildings and facilities inventory;

(8) New Construction, repair, renovation, or acquisition of buildings and facilities that are to be used exclusively for auxiliary enterprises and will not require appropriations from the legislature for operations, maintenance, or repair; and

(9) All gifts and grants of improved real property.

§17.21. *Submission Procedures.*

Institutions shall submit the following materials to the Coordinating Board:

(1) a signed Board of Regents Certification form certifying that the institution's Board of Regents or its delegated authority has

approved the project [and that the project complies with applicable state and federal requirements as listed on the form] shall be submitted to the Coordinating Board before the start of the project.

(2) Institutions shall submit a completed project application electronically through the Coordinating Board's website once completed project costs are known, but no later than 90 days after the project has been added to the Facilities Inventory.

(3) For Real Property Purchase Projects, in addition to paragraphs (1) and (2) of this section, institutions shall submit appraisals in accordance with the below:

(A) An institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.

(B) Appraisals shall be considered current if the appraisal was completed no more than two years prior to the date the project application is submitted to the Coordinating Board.

(4) Appraiser Credentials. Any appraisal report provided to the Coordinating Board under this section shall certify that the appraiser(s) meets one of the following requirements:

(A) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate;

(B) Is a member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions;

(C) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property;

(D) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;

(E) Is a senior member of the National Association of Independent Fee Appraisers designated IFAS;

(F) Is an appraiser-counselor member of the National Association of Independent Fee Appraisers designated IFAC;

(G) Is a licensee of the Texas Appraiser Licensing and Certification Board in good standing and certified or licensed at the appropriate level for the project and must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also state that they have the knowledge and experience to complete the assignment competently; or

(H) Is a member of the American Society of Farm Managers and Rural Appraisers (ASFMRA) designated as an Appraisal Rural Appraiser, or ARA, who is experienced to value rural property matters as they relate to rural property acquisitions, dispositions or condemnation needs.

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

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SUBCHAPTER C. PROJECT STANDARDS

19 TAC §§17.30 - 17.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter C, §§17.30, 17.31, and 17.32, concerning Project Standards. Specifically, changes throughout this subchapter will align terminology with forthcoming new definitions in proposed subchapter A, which will separate out the meaning of "Board," "Coordinating Board," and "Coordinating Board Staff or Board Staff." Separate definitions will improve clarity of roles and responsibilities in Coordinating Board rules.

Rule 17.30(2) and 17.31(2) adds the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.30(4)(B)(ii), deletes the term "THECB" and replaces the term with "Board" to align with proposed definition changes in Subchapter A.

Rule 17.30(1), 17.31(1), and 17.32(1) deletes the specificity of the use of "Board's" as it relates to the space projection model, which is defined in Subchapter E under Board reports.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;

- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@higher.ed.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, Sections 17.30, 17.31, and 17.32.

§17.30. Standards for New Construction and/or Addition Projects.
The established project standards for New Construction and Addition projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [Board's] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The construction building cost per gross square foot shall not exceed one standard deviation above the mean of similar projects received by the Coordinating Board within the last seven years, adjusted for inflation as described in the Coordinating Board's Construction Cost report, §17.100 of this title.

(3) Building Efficiency--The ratio of NASF to GSF for the space in projects for classrooms and general-purpose facilities shall be 0.60 or greater. Where the following specialized space is predominant in the project, the ratios of NASF to GSF shall be as follows:

- (A) Office space: 0.65 or greater;
- (B) Clinical facility; 0.50 or greater;
- (C) Diagnostic support laboratories: 0.50 or greater;
- (D) Technical research buildings: 0.50 or greater; and
- (E) For mixed-use facilities, the ratio of NASF to GSF shall be calculated for each space type and considered separately.

(4) Space Usage Efficiency--The use of existing classroom and class laboratory facilities will be considered when the project includes Education & General (E&G) square footage.

- (A) Classroom space usage efficiency--
 - (i) A score of 75 points or higher is considered as meeting the standard; and
 - (ii) The classroom score will determine compliance for projects involving the following facility types: classroom, general; auditorium/theater; other facility types that appear to contain classrooms or similar space.
- (B) Class laboratory space usage efficiency--
 - (i) A score of 75 points or higher is considered as meeting the standard; and

(ii) The class laboratory score will determine compliance for projects involving facility type laboratory, general and other facility types that appear, as determined by the Board [THECB] staff, to contain class laboratories or similar space.

(C) Overall space usage efficiency--

(i) Overall score is a function of the classroom and class laboratory scores. A combined score of 150 or higher, as determined by summing the classroom and class laboratory scores, is considered as meeting the overall standard; and

(ii) The overall score is applicable for projects involving the following facility types: athletic; office, general; office, high rise; student center; other; and projects that cannot clearly be classified in a single category of facility type.

§17.31. *Standards for Repair & Renovation Projects.*

The established project standards for Repair and Renovation projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [Board's] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The construction building cost per gross square foot shall not exceed one standard deviation above the mean of similar projects received by the Coordinating Board within the last seven years, adjusted for inflation as described in the Coordinating Board's Construction Cost report, §17.100 of this title.

(3) Building Efficiency--The institution shall demonstrate that the project does not reduce the existing ratio of NASF to GSF for the building by more than 10 percent. If the project renovation is required to comply with federal or state requirements, the institution shall explain any reduction in the ratio of NASF to GSF for the building.

§17.32. *Standards for Improved Real Property Purchase Projects.*

The established project standards for Improved Real Property Purchase projects are as follows:

(1) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the [Board's] space projection model report, required by §17.100 of this title (relating to Board Reports).

(2) Cost--The proposed purchase price should not exceed the higher of two appraisal values. If the purchase price is greater than the highest appraised value, the institution shall demonstrate the need for purchasing the property at the greater value.

(3) Repair and Renovation--If the project includes repair and renovation of any improvements on the property, the standards in §17.31 of this title (relating to Standards for Repair & Renovation Projects) shall apply.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



SUBCHAPTER E. REPORTS

19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter E, §17.100 and §17.101, concerning Board and Institutional Reports related to facilities, space need, and efficiency. Specifically, these changes align rules with current agency practices related to producing reports for resource planning.

Rule 17.100 provides that the Board delegates to the Commissioner of Higher Education to approve the required reports listed, including the space projection model, space usage efficiency, and construction costs, as required under Texas Education Code, §§61.0572 and 61.058.

Rule 17.100(1), (2), and (3) amend language to define each of the reports and delete unnecessary language related to each of the reports.

Rule 17.100(1)(A) provides that the existing General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee and Health-Related Institutions Formula Advisory Committee may review the space projection model as part of tasks assigned to the committees in rule 1.169 and 1.176 as the model is currently in use by the legislature in making appropriations to these institutions of higher education. This replaces a provision currently in the rule providing that the Commissioner may convene a separate committee to review the model and streamlines the process using standing advisory committees.

Rule 17.100(2) deletes duplicative language pertaining to the space usage efficiency report.

Rule 17.100(3) adds the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.101 amends terminology throughout the rule to align with the proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This allows for the specific identification of responsible parties completing each specified action or report.

Rule 17.101(1)(B) includes an additional use of the data, noting that the facilities inventory data may also be used to calculate the construction cost standard.

Rule 17.101(2)(A)(i) - (iv) removes reporting based on specific dollar thresholds with new language that aligns the thresholds in accordance with language from Article IX, General Provisions, Section 11.03, Statewide Capital Planning, of the Fiscal Year 2024-25 General Appropriations Act.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on approval of facilities reports and on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17.

§17.100. Coordinating Board Reports.

The Commissioner [~~Board~~] shall annually approve [~~prepare~~] the following reports:

(1) Space Projection Model. [~~The Board, in consultation with the institutions, shall develop~~] A space planning model [~~models~~] to estimate the NASF of E&G space needed at institutions of higher education.

(A) Periodic Review. The General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee and Health-Related Institutions Formula Advisory Committee established under chapter 1, subchapter L of this title (relating to Formula Advisory Committee-General Academic Institutions, Technical Colleges, and State Colleges) and chapter 1, subchapter M, of this title (relating to Formula Advisory Committee-Health-Related Institutions) may [~~Each biennium, the Commissioner may convene an advisory committee of institutional representatives to~~] review the model and recommend changes.

(B) Use. The Board may [~~shall~~] use the models developed under this section to determine the need for space on campuses, as a component of recommended funding formulas for public institutions of higher education [~~other than community colleges~~], and as standards for facilities development projects.

(2) Space Usage Efficiency (SUE). An annual report on [~~The Board shall collect data and publish reports designed to inform~~

the public and other state agencies of] the intensity of use of E&G facilities at institutions of higher education for classrooms and class laboratories. Classroom and class lab utilization data are not calculated for health-related institutions.

~~[(A) Periodic Review. The Board shall annually calculate the utilization of classrooms and class laboratories for the institutions.]~~

~~[(B) Use. The Board shall use the models developed under this section to determine the utilization of classrooms and class laboratories for the institutions.]~~

(3) Construction Costs. A calculation of [~~The Board shall annually calculate and report~~] the mean and one standard deviation above the mean for construction building costs per square foot. The costs shall be based on similar projects reported to the Coordinating Board, within the immediate prior seven years, annually adjusted for inflation for the region of the state where the project is located. As a minimum, the calculations shall be developed for both new construction/addition and repair and renovation for all facility types available and shall be published on the agency website.

§17.101. Institutional Reports.

Institutions of higher education shall submit current data to the Coordinating Board for the following reports:

(1) Facilities Inventory.

(A) Periodic Review. Institutions shall report a record of all property, buildings, and rooms occupied or in the control of an institution in a format specified by the Coordinating Board.

(i) The institution shall update its inventory of facilities on an ongoing basis.

(ii) The inventory is subject to periodic audits.

(iii) The inventory shall be certified by the institution annually on or before November 1, or as specified by the Board staff.

(B) Use. The Coordinating Board shall use the data reported in the facilities inventory for the facilities audit program and for other required or requested analyses. The facilities inventory shall be used to complete the following reports:

(i) the Space Projection Model;

(ii) calculation of an institution's Building Replacement Estimate Report; [~~and~~]

(iii) calculation of the Space Usage Efficiency (SUE) report; [~~and~~]

(iv) calculation of the construction cost standard.

(2) Facilities Development Reports.

(A) Capital Expenditure Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Capital Expenditure Plan (MP1) on file with the Coordinating Board, as required by Texas Education Code, §61.0572(b)(4). In every even-numbered year, the Commissioner [~~Board~~] shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include planned maintenance, facilities adaptation, and deferred maintenance projects. The data may be used by the Coordinating Board to respond to legislative requests, predictions of future space need, and similar analyses. The report shall include projects that are planned [~~or may be submitted to the Board~~] within the next five years, regardless of funding source, in

alignment with dollar thresholds established by the most recent General Appropriations Act and Bond Review Board guidelines:

- (i) new construction projects [~~\$1,000,000 or more~~];
- (ii) repair and rehabilitation projects [~~\$1,000,000 or more~~];
- (iii) information resource projects [~~that cumulatively would total \$1,000,000 or more in one year~~];

(iv) property purchases that cumulatively would total more than the dollar thresholds established by the most recent General Appropriations Act and Bond Review Board guidelines [~~\$1,000,000 or more in one year~~] (the actual property address or location for individual property acquisitions may be, but are not required to be, identified in a single proposed project entitled "property acquisitions" with a total cost of all purchases or acquisitions projected over the reporting period);

(v) the funding source for any planned project identified in clauses (i), (ii), (iii), and (iv) of this subparagraph; and

(B) Campus Condition Report. Annually, an institution shall provide a copy of its Campus Condition Report to the Coordinating Board, as supplied to their Governing Board.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



SUBCHAPTER F. FACILITIES AUDIT

19 TAC §§17.110 - 17.114

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114, concerning Facilities Audits. Specifically, the amendments update verbiage in the sections listed individually below.

Rules 17.110 and 17.114 update nomenclature from "THECB staff" to "Board staff" and from "THECB" to "Coordinating Board" in alignment with proposed changes to definitions in Subchapter A. The amendments allow for the specific identification of responsible parties completing each specified action or report.

Rule 17.110(a) removes the use of "approved" from facilities development projects as the Coordinating Board does not approve projects and solely collects data on the projects, in accordance with Texas Education Code, §§61.0572 and 61.058. Additional revisions correct terminology related to educational and general facilities.

Rules 17.111(1), 17.112, and 17.113(a) add the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. The amendments allow for the specific identification of responsible parties completing each specified action or report.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is clarity on the distinction between actions taken by the governing body, agency staff, and the agency as a whole. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The proposed amendments affect Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114.

§17.110. General Provisions.

(a) [The] Board staff shall periodically conduct a comprehensive audit of all educational [~~education~~] and general facilities on the campuses of institutions to verify the accuracy of the institutional facilities inventory and [~~approved~~] facilities development projects for each of those institutions.

(b) No later than 30 days after Board [THECB] staff has presented the Facilities Audit Report to the Board (or appropriate standing committee of the Board), Board staff [~~the Board~~] files a copy of the report with the institution and the Legislative Budget Board.

(c) Institutions that conduct regularly scheduled self-audits may be exempted from the on-site review providing that:

(1) The institution presents to the Coordinating Board [THECB] a copy of the formal report of the audit and its documented processes that demonstrate the accuracy of the data; and

(2) confirmation that the review includes consideration of the facilities audit objectives stated in §17.111 of this title (relating to Facilities Audit Objectives).

§17.111. *Facilities Audit Objectives.*

The objectives of the audit are to determine whether selected institutions of higher education:

(1) are accurately reporting their facilities inventory data to the Coordinating Board; and

(2) have followed the Board rules and received approval where such approval was required.

§17.112. *Data Sources.*

The Coordinating Board may use the following data sources in the course of the audit:

- (1) Institutional Capital Expenditure Plans (MP1);
- (2) Campus Condition Report as submitted to the governing board;
- (3) Space Model Projection Reports;
- (4) Reports required by the Educational Data Center;
- (5) Facilities Inventory Reports;
- (6) Facilities Development and Improvement Applications and Reviews;
- (7) Classroom and Class Laboratory Utilization Reports;
- (8) Energy Savings Performance Contracts;
- (9) Governing Board facilities approvals; and
- (10) Any other institutional data deemed appropriate by the Coordinating Board staff.

§17.113. *Institutional Audit Cycle.*

(a) The Coordinating Board shall determine the frequency and the scope of the audits authorized by this section; audits shall be limited to objectives stated in §17.111 of this title (relating to Facilities Audit Objectives).

(b) The Board may conduct an audit of an institution more often than every five years upon the request of the institution, the Board, the Legislature, or another agency within revenue appropriated for this purpose.

(c) [~~Staff of the~~] Board staff shall publish a schedule of audits for the succeeding fiscal year.

§17.114. *Audit Components.*

Audits consist of two components:

(1) On-Site Audit of an Institution's Facilities Inventory:

(A) Institutions may participate in the Peer Review Team (PRT) process, by which institutions aid in auditing one another, with the participation of Board [THECB] staff. Institutions participating in the PRT program must provide one or more qualified individuals with facilities management for the PRT pool maintained by the Board [THECB] Staff; or

(B) Institutions choosing not to participate in the PRT audit process are required to conduct self-audits in accordance with

§17.110(c) of this chapter (relating to General Provisions) [Subchapter F, 17.110(e)].

(2) Audit of an Institution's Facilities Development Projects:

(A) The Internal Auditor of an institution (or its System Office) may determine if facilities projects were submitted to the Coordinating Board in accordance with §17.20 of this title (relating [~~Relating~~] to Facility Projects to Be Submitted to the Coordinating Board) and submit a report to the Coordinating Board [THECB].

(B) Board staff [The THECB] shall publish a Facilities Audit Protocol on the agency's website, including details on the process and timing of these components.

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



SUBCHAPTER G. TEXAS STATE TECHNICAL COLLEGE SYSTEM ACQUISITIONS OF LAND AND FACILITIES

19 TAC §17.200

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter G, §17.200, concerning Texas State Technical College System Acquisitions of Land and Facilities. Specifically, this new section will establish the Texas State Technical College land and facilities projects requiring Coordinating Board approval and the method by which the Coordinating Board would review and consider the projects for approval.

Rule 17.200 ensures a documented approval process for certain Texas State Technical College System land and facilities purchases if the combined value is more than \$300,000, in accordance with Texas Education Code, §135.02(c). This differs from facilities related projects at other institutions of higher education for which an institution's Board of Regents has sole authority to approve and the Coordinating Board only receives information on the project.

The rule requires the institution to submit the project in accordance with §17.21, Submission Procedures, and the Coordinating Board to assess the project in accordance with the standards provided under §17.32, Standards for Improved Real Property Purchase Projects.

Emily Cormier, Assistant Commissioner for Funding, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There

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

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Emily Cormier, Assistant Commissioner for Funding, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is to codify approval requirements in accordance with Texas Education Code, §135.02(c), which requires the Coordinating Board to approve certain Texas State Technical College System land and facilities purchases if the combined value is more than \$300,000. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Emily Cormier, Assistant Commissioner for Funding, P.O. Box 12788, Austin, Texas 78711-2788, or via email at funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, §135.02(c), which requires the Coordinating Board to approve certain Texas State Technical College System land and facilities purchases.

The proposed new section would affect Title 19, Part 1, Chapter 17, by adding Subchapter G, §17.200.

§17.200. Projects Requiring Board Approval.

(a) Notwithstanding any other part of chapter 17, the Commissioner must review and approve the acceptance or acquisition of any land and facilities for Texas State Technical College System if it meets the following requirements:

(1) the board of regents of the Texas State Technical College System requests to place the land and facilities on its E&G space inventory; and

(2) the combined value of the land and facilities is more than \$300,000.

(b) For all real property acquisitions, Texas State Technical College System shall comply with §17.21 of this chapter (relating to Submission Procedures) for reporting related information to the Board.

(c) If the property has improvements, the Commissioner will assess the project in accordance with project standards for Improved

Real Property Purchase Projects in §17.32 of this chapter (relating to Standards for Improved Real Property Purchase Projects).

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

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Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6548



CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER O. TEXAS LEADERSHIP RESEARCH SCHOLARS PROGRAM

19 TAC §22.301, §22.310

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter O, §22.301 and §22.310, concerning the Texas Leadership Research Scholars Program. Specifically, this amendment will clarify the type of institutions eligible to participate and how the allocation of funds is determined.

Texas Education Code (TEC), Chapter 61, Subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The amended sections provide clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Rule 22.301, Definitions, provides definitions for words and terms within Texas Leadership Research Scholars rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Research Scholars rules. Specifically, the amended section clarifies that general academic institutions are eligible to participate in the Texas Leadership Research Scholars Program.

Rule 22.310, Scholarship Amounts and Allocation of Funds, outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The rule provides clarification of the statutory requirements related to the minimum amount of the award and how the amount will be calculated to provide clarity for the annual allocation formula for each institution. Specifically, the amended section outlines how the allocation of initial awards will be determined between eligible institutions, clarifying the data used to determine each eligible institution's share of awarded research doctoral degrees, and if there is insufficient funding to award more than seventy-five initial scholarships the awards will be split between public research and emerging institutions. This calculation ensures that initial scholarship awards are being allocated to institutions successfully graduating research doctorates.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the

sections are in effect there may be fiscal implications for state or local governments as a result of enforcing or administering the rules for the Texas Leadership Research Scholars program. However, participation in the program is voluntary for institutions of higher education. Fiscal implication of the potential for increased funding to institutions of higher education is funded as part of the Texas Leadership Research Scholars program in statute and the General Appropriations Act. Additional ancillary costs to institutions that choose to participate are assumed within the fiscal note for the legislation. The rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the rule will be the increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities that may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Research Scholars program is voluntary.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at StudentSuccess@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

The proposed amendment affects Texas Education Code, Sections 61.891 - 61.897.

§22.301. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions) the following words and terms, when used in this subchapter, shall have the following meanings, unless the context

clearly indicates otherwise. In the event of conflict, the definitions in this subchapter shall control.

(1) Administrator--The institution of higher education contracted by the Coordinating Board to administer the Program.

(2) Eligible Institution--A general academic teaching institution as defined by Texas Education Code, §61.003(3) [section 61.003(3) of the Texas Education Code and designated as either a public research university or public emerging research university under the Coordinating Board's accountability system].

(3) Leadership Scholarship--The scholarship awarded to an undergraduate student in the program under subchapter N of this chapter (relating to Texas Leadership Scholars Grant Program).

(4) Program--The Texas Leadership Research Scholars Grant Program.

(5) Research Doctoral Degree--In this subchapter, Research Doctoral Degree means a research doctoral degree that is included on the list of research doctoral degrees published annually by Coordinating Board staff on March 1 of each fiscal year. The list of research doctoral degrees shall be annually updated by Coordinating Board staff to reflect all degree titles included in the most recently published National Science Foundation Survey of Earned Doctorates and any additional degree titles identified by the Commissioner.

(6) Research Scholar--An eligible graduate student who was nominated and selected to participate in the Texas Leadership Research Scholars Grant Program.

(7) Research Scholarship--The scholarship awarded to a graduate student in the Program.

§22.310. Scholarship Amounts and Allocation of Funds.

(a) Funding. The Coordinating Board may not award through this Program an amount that exceeds the amount of state appropriations and other funds that are available for this use.

(b) Scholarship Amounts.

(1) The Commissioner shall establish the amount of each Research Scholarship in an academic year that is 150% of the average of the amount of the Leadership Scholarships awarded across public research and public emerging research institutions under subchapter N of this chapter (relating to Texas Leadership Scholars Grant Program), based on available appropriations for the Program. The Scholarship may be applied toward housing, food, or other costs of attendance allowed under the Program, at the participating eligible institution as approved by the Coordinating Board.

(2) An Eligible institution may not reduce the amount of a scholarship by any gift aid for which the Research Scholar receiving the scholarship is eligible unless the total amount of a Research Scholar's scholarship plus any gift aid received exceeds the Research Scholar's cost of attendance.

(3) An Eligible institution shall ensure each Research Scholar receives the scholarship awarded under the program for four (4) years so long as the scholar maintains eligibility set forth in §22.303(b) of this subchapter (relating to Eligible Students).

(c) Allocation of Funds.

(1) The Commissioner shall determine and announce the number of initial scholarships available to each participating eligible institution by January 31 of the prior fiscal year set forth in §22.303(a) of this subchapter, based on the following criteria:

(A) If there is sufficient funding to award more than seventy-five (75) initial Scholarships in a given fiscal year, the Co-

ordinating Board shall award initial Scholarships to each eligible institution based on each eligible institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates; and

(B) If there is funding to award seventy-five (75) initial Scholarships or fewer in a given fiscal year, the Coordinating Board shall divide the initial Scholarships in the following way:

(i) 50% of available initial Scholarships will be allocated among public research universities based on each institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates; and

(ii) 50% of available initial Scholarships will be allocated among emerging research universities based on each institution's share of awarded research doctoral degrees calculated using the most recent year available of data reported by the National Science Foundation in the annual Survey of Earned Doctorates.

~~[(A) 50% of available initial Scholarships will be allocated among public research universities based on the institution's share of the number of research doctoral degrees awarded by public research universities in the prior academic year, as determined by the commissioner; and]~~

~~[(B) 50% of available initial Scholarships will be allocated among emerging research universities based on each institution's share of the number of research doctoral degrees awarded by public emerging research universities in the prior academic year, as determined by the commissioner.]~~

(2) The number of Scholarships allocated to each participating eligible institution for returning Research Scholars will be the number of Scholars eligible to receive the Scholarship set forth in §22.303(b) of this subchapter.

(3) Each participating eligible institution will receive an annual allocation equal to the number of Scholarships allocated to the institution times the amount established in subsection (b) of this section.

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 July 29, 2024.

TRD-202403455

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 427-6537



CHAPTER 23. EDUCATION LOAN
REPAYMENT PROGRAMS
SUBCHAPTER D. [~~LOAN REPAYMENT
ASSISTANCE PROGRAM FOR~~] MENTAL
HEALTH PROFESSIONALS LOAN REPAYMENT
ASSISTANCE PROGRAM

19 TAC §§23.93, 23.94, 23.96, 23.97, 23.100 - 23.102

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules and amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter D, §§23.93, 23.94, 23.96, 23.97, and 23.100 - 23.102, concerning the Mental Health Professionals Loan Repayment Assistance Program. Specifically, the amendments will align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules. The new sections will consolidate provisions from other rules related to program limitations and specific provisions affecting persons who first established eligibility for the program prior to September 1, 2024. The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.608.

The subchapter is retitled to conform with the titles of the other subchapters in Chapter 23.

Rule 23.93 is amended to make conforming changes to the subchapter title.

Rule 23.94 is amended by removing three unnecessary definitions and unnecessary portions of another definition. After the creation of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions for this chapter, the definition of "Board staff" in §23.94 is redundant, with all references to "Board staff" throughout the subchapter changed to "Coordinating Board." The terms "Local Mental Health Authority" and "Title I school" are used only once each in rule, so the definitions are eliminated and have been incorporated contextually when the terms appear. The definition of "full-time service" is amended to eliminate the listed conditions that constitute eligible service (existing subparagraphs (4)(A) - (D)). These conditions are included in the eligibility criteria described in §23.96 (relating to Eligible Applicants).

Rule 23.94 is further amended by expanding the existing definition of "service period." Specifically, an alternate definition is provided that allows service for at least 9 months of a 12-month academic year by a licensed specialist in school psychology. The existing definition conflicts with the typical employment contract for these individuals, inadvertently disqualifying some otherwise eligible applicants from receiving loan repayment funds. The expanded definition remedies this.

Rule 23.96 is amended to simplify program eligibility rules so they more clearly reflect Coordinating Board practice. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, subsection (a) of this section and repealed §23.98 (related to Eligibility for Disbursement of Loan Repayment Assistance) are consolidated into the amended subsection (a) and the new subsection (b). Eligible practice specialties, previously listed in repealed §23.95, also are incorporated in paragraph (a)(3). Further edits are made to clarify certain eligibility criteria, but the proposed rule changes will not substantively change program requirements. The existing subsection (b) is eliminated and reconstituted within the new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023).

Rule 23.97 is amended to clarify how the Coordinating Board prioritizes disbursement in the event that available funds are insufficient to offer loan repayment assistance to all eligible applicants. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Existing subsections (b) and (c) are removed and reconstituted in §23.101 (relating to Limitations). The prioritization process in new subsection (b), which consolidates existing subsections (d), (e), and (f), is slightly amended in three substantive ways. First, subparagraph (b)(1)(C) is clarified to align with current practice that "MHPSA scores that reflect the highest degrees of shortage" means that the Coordinating Board ranks applications by MHPSA score in descending order, starting with applications with the highest score. Also, subparagraph (b)(1)(E) is amended to reflect that "rural area," which previously was not defined in rule, means a county with a population of less than 50,000 persons, which is the Coordinating Board's operational definition for the term in all loan repayment programs. Finally, paragraph (b)(2) is added based on the existing subsection (f) but further clarified that renewal applications from licensed marriage and family therapists will be prioritized over initial applications. Existing subsection (g) is removed and reconstituted in §23.100 (relating to Amount of Repayment Assistance).

Rule 23.100 is amended by adding some provisions that previously existed elsewhere in the subchapter and removing provisions that are relocated to other rules. Existing subsection (a) is redundant with provisions within §23.3 (relating to Methods of Disbursement) in the general provisions of this chapter and is removed. Existing subsection (b) and paragraph (e)(1) are removed and relocated to new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023). New subsection (a) has "on or after September 1, 2023" language removed to make it the clear default state and is rephrased to combine the provisions of existing subsection (c) and paragraph (e)(2). Existing subsection (d) is removed and reconstituted in §23.101 (relating to Limitations). New subsection (d) is the reconstituted §23.97(g).

Rule 23.101 is created to consolidate various program limitations that previously were spread throughout the subchapter. Paragraphs (1) and (2) are the reconstituted §23.97(b) and (c); paragraph (3) is the reconstituted §23.100(d); and paragraph (4) codifies existing Coordinating Board practice that loan repayment assistance amounts may never exceed unpaid principal and interest owed on eligible education loans.

Rule 23.102 is created to consolidate provisions that specifically apply to providers who established eligibility for the program prior to September 1, 2023. Subsections (a) and (b) are the reconstituted §23.96(b), (c), and (d), with changes to reflect the elimination of the outdated "two-step" eligibility process in rule; and subsection (c) is the reconstituted and consolidated §23.100(b) and (e)(1).

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs 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 is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the establishment of rules that more clearly articulate Coordinating Board policy and better align with rules governing the Coordinating Board's other loan repayment assistance programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new sections are proposed under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Loan Repayment Program for Mental Health Professionals.

The proposed amendments and new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 23.

§23.93. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, chapter [Chapter] 61, subchapter [Subchapter] K, Repayment of Certain Mental Health Professional Education Loans. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.601 - 61.609.

(b) Purpose. The purpose of the Mental Health Professionals Loan Repayment Assistance Program [for Mental Health Professionals] is to encourage qualified mental health professionals to provide services to designated recipients in a mental health professional shortage area or state hospital, through a mental health authority, or to students in eligible schools.

§23.94. Definitions.

In addition to the words and terms defined in §23.1 of this chapter (relating to Definitions), the [The] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

[(1) Board Staff--The staff of the Texas Higher Education Coordinating Board.]

(1) [(2)] CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(2) [(3)] Community-Based Mental Health Services--The services found under the Texas Health and Safety Code, [Subchapter B,] Chapter 534, Subchapter B [Health and Safety Code].

(3) [(4)] Full-time Service--Employed or contracted full-time (at least 32 hours per week for providers participating only in the state-funded program, or at least 40 hours per week for providers participating in both the state funded program and the SLRP) by an agency or facility for the primary purpose of providing direct mental health services. [to:]

[(A) in a mental health professional shortage area:]

[(i) Medicaid recipients:]

[(ii) CHIP enrollees:]

[(iii) persons in facilities operated by or under contract with the Texas Juvenile Justice Department; and/or]

[(iv) persons in facilities operated by or under contract with the Texas Department of Criminal Justice; or]

[(B) patients in state hospitals:]

[(C) individuals receiving community-based mental health services from a local mental health authority; and/or]

[(D) students enrolled in an eligible district or school.]

[(5) Local Mental Health Authority--As defined in Texas Health and Safety Code, §531.002.]

(4) [(6)] Medicaid--The medical assistance program authorized by [Chapter 32,] the Texas Human Resources Code, Chapter 32.

(5) [(7)] MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center, or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e). [Texas MHPSAs are recommended for designation by HHS based on analysis of data by the Department of State Health Services.]

(6) Program--Mental Health Professionals Loan Repayment Assistance Program.

(7) [(8)] Psychiatrist--A licensed physician who is a graduate of an accredited psychiatric residency training program.

(8) Service Period--A period of:

(A) twelve (12) consecutive months qualifying a mental health professional for loan repayment assistance; or

(B) for a mental health professional described by §23.96(a)(3)(F) of this subchapter (relating to Applicant Eligibility), at least nine (9) months of a 12-month academic year qualifying the professional for loan repayment assistance.

[(9) Service Period--A period of 12 consecutive months qualifying a mental health professional for loan repayment.]

(9) [(10)] SLRP--A grant provided by the Health Resources and Services Administration to assist states in operating

their own State Loan Repayment Program (SLRP) for primary care providers working in Health Professional Shortage Areas (HPSA).

(10) [(11)] State Hospital--Facilities found under the Texas Health and Safety Code, §552.0011[; Health and Safety Code].

[(12) Title I School--Texas public school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.);]

§23.96. Applicant Eligibility [for Conditional Approval of Applications].

(a) To be eligible to receive loan repayment assistance, an applicant [for the Board staff to reserve loan repayment funds; a mental health professional] must:

(1) submit a [ensure that the Board staff has received the] completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) currently be employed as one of the following eligible practice specialties: [not be currently fulfilling another obligation to provide mental health services as part of a scholarship agreement, a student loan agreement, or another student loan repayment agreement.]

(A) a psychiatrist;

(B) a psychologist, as defined by §501.002, Texas Occupations Code;

(C) a licensed professional counselor, as defined by §503.002, Texas Occupations Code;

(D) an advanced practice registered nurse, as defined by §301.152, Texas Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;

(E) a licensed clinical social worker, as defined by §505.002, Texas Occupations Code;

(F) a licensed specialist in school psychology, as defined by §501.002, Texas Occupations Code;

(G) a licensed chemical dependency counselor, as defined by §504.001, Texas Occupations Code; or

(H) a licensed marriage and family therapist, as defined by §502.002, Texas Occupations Code; and

(4) have completed one, two, or three consecutive service periods:

(A) in an MHPSA, providing direct patient care to:

(i) Medicaid enrollees;

(ii) CHIP enrollees, if the practice serves children;

(iii) persons in a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor; or

(iv) persons in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(B) in a state hospital, providing mental health services to patients; or

(C) providing mental health services to individuals receiving community-based mental health services from a local mental health authority, as defined in Texas Health and Safety Code, §531.002.

(b) Notwithstanding subsection (a)(4) of this section, to be eligible to receive loan repayment assistance as a specialist in school psychology as outlined under subsection (a)(3)(F) of this section, the applicant must:

(1) have completed one, two, or three consecutive service periods of employment in:

(A) a school district which is located partially or completely in a MHPSA;

(B) an open-enrollment charter school located in a MHPSA; or

(C) a Texas public school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.); and

(2) have provided mental health services to students enrolled in that district or school during that time of employment.

[(b) For applicants who first establish eligibility for the program before September 1, 2023, a mental health professional must:]

[(1) agree to provide five consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and]

[(2) agree to provide mental health services to:]

[(A) Individuals enrolled in Medicaid or CHIP or both; or]

[(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.]

[(c) For applicants who first establish eligibility for the program on or after September 1, 2023, a mental health professional must:]

[(1) agree to provide three consecutive years of eligible service in a Mental Health Professional Shortage Area, with the understanding that the professional will be released from the agreement if funding for continued loan repayment is not appropriated; and]

[(2) agree to provide mental health services to:]

[(A) Individuals enrolled in Medicaid or CHIP or both; or]

[(B) persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice.]

[(d) Notwithstanding subsection (c), for applicants who first establish eligibility for the program on or after September 1, 2023, who provide mental health services to patients in state hospitals, individuals receiving community-based mental health services from a local mental health authority, or students enrolled in an eligible district or school, a mental health professional must agree to provide three consecutive years of eligible service as outlined in §23.98 of this subchapter (relating to Eligibility for Disbursement of Loan Repayment Assistance).]

§23.97. *Applicant Ranking Priorities [Selection of Eligible Applicants and Limitations].*

(a) Each fiscal year an application deadline will be posted on the program web page.

(b) If there are not sufficient funds to offer loan repayment assistance for all eligible providers, applications shall be prioritized as follows:

(1) Applications from eligible providers from practice specialties described in §23.96(a)(3)(A) - (G) of this subchapter (relating to Applicant Eligibility), ranked by the following criteria:

(A) renewal applications;

(B) applications from providers who sign SLRP contracts;

(C) applications from providers whose employers are located in an MHPHA, prioritizing higher MHPHA scores. If a provider works for an agency located in an MHPHA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPHA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPHA score shall apply. If a provider works for different employers in multiple MHPHAs having different degrees of shortage, the location having the highest MHPHA score shall apply;

(D) applications from providers in state hospitals;

(E) applications from providers whose employers are located in counties with a population of less than 50,000 persons. In the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in counties with a population of less than 50,000 persons; and

(F) applications received on the earliest dates; and

(2) Applications from eligible providers from the practice specialty described in §23.96(a)(3)(H) of this subchapter, ranked by the following criteria:

(A) renewal applications; and

(B) applications received on the earliest dates.

[(b) Not more than 10 percent of the number of repayment assistance grants paid under this subchapter each year may be awarded to mental health professionals providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these professionals will be selected on a first-come-first-served basis.]

[(c) Not more than 30 percent of the number of repayment assistance grants paid under this subchapter each fiscal year may be awarded to mental health professionals in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.]

[(d) For practice specialties outlined in §23.95(1) - (7) of this subchapter (relating to Eligible Practice Specialties), applications will be ranked in order of the following priorities:]

[(1) providers who benefitted from awards the previous year;]

[(2) providers who sign SLRP contracts;]

[(3) providers whose employers are located in areas having MHPHA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPHA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPHA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPHA score shall apply. If a provider works for different employers

in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;]

[(4) providers in state hospitals;]

[(5) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and]

[(6) providers whose applications were received on the earliest dates.]

[(e) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in subsection (d) of this section, applications for practice specialties outlined in §23.95(1) - (7) of this subchapter will be ranked in order of the following priorities, regardless of the applicant's practice specialty:]

[(1) providers whose employers are located in areas having MHPSA scores that reflect the highest degrees of shortage. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;]

[(2) providers whose employers are located in rural areas, if, in the case of providers serving at multiple sites, at least 75% of their work hours are spent serving in those areas; and]

[(3) providers whose applications were received on the earliest dates; and]

[(4) providers eligible under subsection in §23.95(8) of this subchapter.]

[(f) If funds remain available after loan repayment awards have been reserved for applicants selected according to the criteria stated in subsection (e) of this section, applications for practice specialties outlined in §23.95(8) of this subchapter, will be ranked in order of the providers whose applications were received on the earliest dates.]

[(g) If state funds are not sufficient to allow for maximum award amounts stated in §23.100 of this subchapter (relating to Amount of Repayment Assistance) for all eligible applicants, the Board staff may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with TEC 61.607(d).]

§23.100. Amount of Repayment Assistance.

[(a) Loan repayment awards will be disbursed directly to lenders on behalf of eligible mental health professionals.]

[(b) Repayment assistance for each year of full-time service for mental health professionals who first established eligibility for the program before September 1, 2023, will be in an amount determined by applying the following applicable percentage to the maximum total amount of assistance allowed for the professional:]

[(1) for the first year, 10 percent;]

[(2) for the second year, 15 percent;]

[(3) for the third year, 20 percent;]

[(4) for the fourth year, 25 percent; and]

[(5) for the fifth year, 30 percent.]

(a) [(e)] Repayment assistance for each service period [year of full-time service for mental health professionals who first established eligibility for the program on or after September 1, 2023,] will be [in an amount] determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.101 of this subchapter (relating to Limitations), or the total student loan debt owed at the time the provider established eligibility for the program [professional]:

(1) for the first service period [year], 33.33 percent;

(2) for the second service period [year], 33.33 percent; and

(3) for the third service period [year], 33.34 percent.

[(d) The total amount of state appropriated repayment assistance received by a mental health professional under this subchapter may not exceed:]

[(1) \$160,000, for a psychiatrist;]

[(2) \$80,000, for:]

[(A) a psychologist;]

[(B) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;]

[(C) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or]

[(D) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;]

[(3) \$60,000, for an advanced practice registered nurse;]

[(4) \$40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and]

[(5) \$10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.]

[(e) If a mental health provider's total student loan indebtedness is less than the total amount of repayment assistance allowed for the provider's practice specialty, the annual loan repayment award amounts based on full-time service will be the following percentages of the student loan debt owed at the time of application for enrollment in the program:]

[(1) For mental health professionals who first established eligibility for the program before September 1, 2023, amounts are 10% for year one, 15% for year two, 20% for year three, 25% for year four, and 30% for year five.]

[(2) For mental health professionals who first established eligibility for the program on or after September 1, 2023, amounts are 33.33% for year one, 33.33% for year two, and 33.34% for year three.]

(b) [(f)] An eligible provider [professional] may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of twenty (20) [20] hours per week.

(c) [(g)] Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Coordinating Board [staff] to constitute good cause, removal from the program.

(d) If state funds are not sufficient to allow for maximum loan repayment assistance amounts stated in this section for all eligible applicants, the Coordinating Board may adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with Texas Education Code, §61.607(d).

§23.101. Limitations.

In addition to the limitations associated with eligible education loans established in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan), the following limitations apply to the Mental Health Professionals Loan Repayment Assistance Program.

(1) Not more than 10 percent of the number of loan repayment assistance grants paid under this subchapter each year may be offered to providers providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these providers will be selected in the order they were submitted.

(2) Not more than 30 percent of the number of loan repayment assistance grants paid under this subchapter each fiscal year may be offered to providers in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.

(3) The total amount of state appropriated repayment assistance received by a provider under this subchapter may not exceed:

(A) \$160,000, for a psychiatrist;

(B) \$80,000, for:

(i) a psychologist;

(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;

(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or

(iv) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;

(C) \$60,000, for an advanced practice registered nurse;

(D) \$40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and

(E) \$10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.

(4) A provider's loan repayment assistance amount may not exceed the unpaid principal and interest owed on one or more eligible education loans, as described in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan).

§23.102. Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023.

(a) Applicant Eligibility. Notwithstanding §23.96(a) of this subchapter (relating to Applicant Eligibility), to be eligible to receive loan repayment assistance, a provider who first established eligibility for the program before September 1, 2023, must:

(1) submit a completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident and have no license restrictions;

(3) currently be employed as one of the eligible practice specialties listed in §23.96(a)(3)(A) - (H); and

(4) have completed one, two, three, four, or five consecutive service periods practicing in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children, or to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor.

(b) Notwithstanding subsection (a)(4) of this section, a psychiatrist who first established eligibility for the program before September 1, 2023, must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for loan repayment assistance for a fourth or fifth consecutive service period.

(c) Amount of Repayment Assistance. Notwithstanding §23.100(a) of this subchapter (relating to Amount of Repayment Assistance), for providers who first established eligibility for the program before September 1, 2023, repayment assistance for each service period will be determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.101 of this subchapter (relating to Limitations), or the total student loan debt owed at the time the provider established eligibility for the program:

(1) for the first service period, 10 percent;

(2) for the second service period, 15 percent;

(3) for the third service period, 20 percent;

(4) for the fourth service period, 25 percent; and

(5) for the fifth service period, 30 percent.

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

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Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6365



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is

"cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §229.1(c) is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 9, 2024, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§229.1, 229.2, 229.3, 229.4, 229.6, and 229.9, concerning accountability system for educator preparation programs. Chapter 229 establishes the performance standards and procedures for educator preparation program (EPP) accountability. The proposed amendments would provide for adjustments to the 2023-2024 *Accountability System for Educator Preparation (ASEP) Manual*; would clarify and streamline language and definitions; would organize the rule text by subchapter; and would include technical updates.

BACKGROUND INFORMATION AND JUSTIFICATION: EPPs are entrusted to prepare educators for success in the classroom. Texas Education Code (TEC), §21.0443, requires EPPs to adequately prepare candidates for certification. Similarly, TEC, §21.031, requires the SBEC to ensure candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. TEC, §21.045, also requires SBEC to establish standards to govern the continuing accountability of all EPPs. The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs to comply with these provisions of the TEC and to ensure the highest level of educator preparation, which is codified in the SBEC Mission Statement.

Following is a description of the topics for the SBEC's consideration for proposed amendments to 19 TAC Chapter 229.

Subchapter A. Accountability System for Educator Preparation Program Procedures

Proposed new Subchapter A and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.1. General Provisions and Purpose of Accountability System for Educator Preparation Programs.

Update of ASEP Manual:

The proposed amendment to Figure: 19 TAC §229.1(c) would update the ASEP manual as follows:

Updates to the table of contents would provide consistent descriptive language for the Principal Survey and Teacher Survey throughout the manual.

Updates to Chapter 1 would remove the date to future updates and to provide consistent descriptive language for the Principal Survey and Teacher Survey.

Updates to Chapter 3 would simplify the description of included individuals to clearly align with 19 TAC §229.4(a)(1)(A). The update would also remove the exception language related to the Performance Assessment for School Leaders, as starting in the 2023-2024 academic year. It is included in Indicator 1A, as prescribed by 19 TAC §229.2(27). Updates to the example also remove this exception. Finally, updates are made to the example to minimize the inclusion of test 291 and to remove 2 of the 3 examples, since it has expired and the procedure for combining the results is now rare. This provides clarity to the field about the calculations.

Updates to Chapter 4 would provide consistency to how the manual refers to the Appraisal of First-Year Teachers by Administrators, including the parenthetical language "Principal Survey," which is in general usage in the field. This will provide clarity to stakeholders. Further updates will provide clearer language related to the inclusion criteria for teachers in the survey population, including the requirements of employment at the time of the PEIMS snapshot date and holding of their first certificate. This will provide transparency to the field. The worked example would also be updated to reflect these changes.

Updates to Chapter 5 would replace the term "STAAR progress measure" with "STAAR Annual Growth Points" to follow the language in use in 19 TAC Figure: §97.1001(b). This will provide a clear match between the ASEP manual and the data source. The updates would clarify the included individuals, adding a requirement of being enrolled or finishing an EPP within five years prior to their first year employed as a certified teacher of record. This follows inclusion criteria for the principal survey and teacher survey and ensures a clear boundary for the included population. The updates would also clarify the included subject areas and certificate requirements. This would provide transparency as to how these calculations are conducted. The section about included assessments would be updated to match 19 TAC Figure: §97.1001(b), which would provide an accurate description of the data. The section about the scoring approach would be updated to better describe the process used to do the calculation, based on the data that are available. The worked example would be updated based on these changes.

Updates to Chapter 6 would specify that beginning in the 2024-2025 academic year, certificate deactivations must meet the requirements in the newly adopted Chapter 228, Requirements for Educator Preparation Programs. This will provide transparency to the field about this requirement. Updates would also note the timeline for the evaluation of the new observations in adopted new 19 TAC Chapter 228, Subchapter F, Support for Candidates During Required Clinical Experiences, with the new requirements first being used in the 2025-2026 academic year. This includes a requirement that beginning in the 2025-2026 academic year, only candidates that began their clinical experiences after the effective date of the rule would be included in the evaluation. This provides EPPs the opportunity to update their practices while ensuring that the evaluation for this indicator is based on the rules that were in place for the duration of the clinical experience. Additional updates would clarify that observations must occur within the date range of the clinical experience, providing clarity to the field. Updates would also remove the exclusion of demographic data for indicator 4b. This exclusion is no longer needed because the data is now collected and can be used. This update would increase the total amount of data used in the determination of ASEP statuses and align indicator 4b with the other indicators. An update to the worked example would correct the language used, for clarity.

Updates to Chapter 7 would provide consistency to how the manual refers to the Evaluation of Educator Preparation Programs by Teachers, including the parenthetical languages "Teacher Survey," which is in general usage in the field. This will provide clarity to stakeholders. Further updates would provide clearer language related to the inclusion criteria for teachers in the survey population, including the requirements of employment at the time of the PEIMS snapshot date and holding their first certificate. Updates would also remove outdated language. This will provide transparency to the field. The worked example would also be updated to reflect these changes.

Updates to Chapter 8 would remove the EPP commendations for the 2023-2024 academic year. This will provide a pause while Texas Education Agency (TEA) staff work with the Board and stakeholders to update the commendation system aligned with new requirements in Chapter 228.

Updates to Chapter 9 would update the examples to include the language about the surveys updated earlier in the rule. This would provide consistency in usage. Updates would also provide an additional year for programs to make improvements on specific indicators by increasing the number of years in a row necessary for a negative value to be introduced into the Index system from two consecutive years to three consecutive years. Currently, if a program fails the same indicator for the same demographic group or at the aggregated "all" level for two years in a row, the weight assigned to the point value is -1, which has a greater impact on the overall score than missing in the first year, where the weight assigned is a 0. The update would change the timeline so that if a program were to miss in the second year, the value would also be 0, and if the program were to miss for the third year consecutively, then the negative weight would be introduced. This is aligned with discussion from the Board and recommended by stakeholders. The worked example would be updated to reflect this change.

Update to Commendations

The update to §229.1(d) would simplify the language related to commendations and note that commendations will not be designated for the 2023-2024 reporting year. This will provide a pause while TEA staff work with the Board and stakeholders to update the commendation system aligned with new requirements in Chapter 228.

§229.2. Definitions.

The proposed amendment to §229.2(5) "Beginning teacher" would clarify the certification status for a beginning teacher. This would align the definition with the requirements used for the sample population for ASEP indicator 3, which is where the definition is used.

The proposed amendment to §229.2(6) "Candidate" would clarify the enrollment status for a candidate and provide a technical edit to remove a reference that is no longer used. This would align the definition with how it is used elsewhere in the chapter.

The proposed amendment to §229.2(9) "Clinical teaching" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(13) "Cooperating teacher" would align the wording to reflect the wording in the newly adopted Chapter 228.

The proposed amendment to §229.2(24) "Internship" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(25) "Mentor" would align the wording to reflect the wording in the newly adopted Chapter 228.

The proposed amendment to §229.2(26) would strike the definition of "New Teacher" because it is not used in the rules. Subsequent definitions would be renumbered.

The proposed amendment to §229.2(28), renumbered to §229.2(27)), "Practicum" would include a technical cross-reference edit to reflect the newly adopted Chapter 228 to change references from §228.35 to §228.2.

The proposed amendment to §229.2(30), (renumbered to §229.2(29)), "Site Supervisor" would align the wording to reflect the wording in the newly adopted Chapter 228.

§229.3. Required Submissions of Information, Surveys, and Other Data.

The proposed amendment to §229.3(a) would remove "new teachers" because there is no longer a separate requirement for "new teachers" and "first-year teachers" related to data collection. The proposed amendment to §229.3(e) and (f) would provide consistent language, removing the only use of "participant" in the chapter, and shift the language from "new" teacher to "first-year" teacher since the survey requirement is now applicable to first-year teachers. This streamlines the language used in the rule and aligns the language in this section with the teacher survey population.

Subchapter B. Accountability System for Educator Preparation Accreditation Statuses

Proposed new Subchapter B and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.4. Determination of Accreditation Status.

The proposed amendment to §229.4(a)(1)(B) would strike the exception for the Performance Assessment for School Leaders because it is now expired. The subsequent provisions would be relettered.

The proposed amendment to §229.4(a)(3) would replace the term "STAAR Annual Progress Measure" with "STAAR Annual Growth Points" to follow the language in use in 19 TAC Figure: §97.1001(b). The amendment would also provide the 2023-2024 academic year as a report only year, because the processes used by TEA to generate the underlying data has shifted, and a report-only year will allow the Board and stakeholders to review results from this new model prior to the data being used for accountability.

The proposed amendment to §229.4(a)(4) and §229.4(a)(4)(A) would remove the general reference to Chapter 228 and replace it with the specific reference in §229.4(a)(4)(A)(1) and §229.4(a)(4)(A)(2). This would provide a clear timeline for when the evaluation of observations will use the current standard and when the evaluation of the observations will use the updated standard in newly adopted 19 TAC Chapter 228, Subchapter F, with the new requirements first being used in the 2025-2026 academic year. This provides EPPs the opportunity to update their practices while ensuring that the evaluation for this indicator is based on the rules that were in place for the duration of the clinical experience.

The proposed amendment to §229.4(a)(5) would update the language from "new" teacher to "first-year" teacher since the teacher survey population has been updated to match that definition. This will provide clarity and streamline the language used in the rule.

Subchapter C. Accreditation Sanctions

Proposed new Subchapter C and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC

in the future. Section 229.5, currently in effect, would be organized under new Subchapter C, but no rule changes are proposed.

Subchapter D. Continuing Approval Procedures

Proposed new Subchapter D and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.6. Continuing Approval.

The proposed amendment to §229.6(a) and (b) would include a technical cross-reference edit to reflect the newly adopted Chapter 228.

Subchapter E. Review Procedures

Proposed new Subchapter E and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future. Sections 229.7 and 229.8, currently in effect, would be organized under new Subchapter E, but no rule changes are proposed.

Subchapter F. Required Fees

Proposed new Subchapter F and title would further organize the rule text and enable greater flexibility in rulemaking for the SBEC in the future.

§229.9. Fees for Educator Preparation Program Approval and Accountability.

The proposed amendment to §229.9(2) and (3) would include a technical cross-reference edit to reflect the newly adopted Chapter 228.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation;

would not limit, expand, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no additional data and reporting impact and would strike the data requirement in §229.3(f)(3) as it was never utilized to measure Indicator 3 in ASEP.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 9, 2024, and ends September 9, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal during the September 20, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAM PROCEDURES

19 TAC §§229.1 - 229.3

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately

prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.1. *General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) The relevant criteria, formulas, calculations, and performance standards relevant to subsection (d) of this section and §229.4 of this title (relating to Determination of Accreditation Status) are prescribed in the *Texas Accountability System for Educator Preparation (ASEP) Manual* provided as a figure in this subsection.

Figure: 19 TAC §229.1(c)
[Figure: 19 TAC §229.1(e)]

(d) An accredited EPP that is not under an active SBEC order or otherwise sanctioned by the SBEC may receive commendations for success as [in the following four dimensions identified by the SBEC and] prescribed in the figure in subsection (c) of this section. Commendations will not be awarded for the 2023-2024 reporting year. [;]

- {(1) Rigorous and Robust Preparation;}
- {(2) Preparing the Educators Texas Needs;}
- {(3) Preparing Educators for Long-Term Success; and}
- {(4) Innovative Educator Preparation.}

§229.2. *Definitions.*

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) ACT®--The college entrance examination from ACT®.

(4) Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(5) Beginning teacher--For purposes of the Texas Education Code, §21.045(a)(3), and its implementation in this chapter, a classroom teacher with fewer than three years of experience as a certified classroom teacher.

(6) Candidate--An individual who has been formally or contingently admitted into an educator preparation program (EPP) who has not yet completed or exited the EPP. [; also referred to as a participant.]

(7) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(8) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(9) Clinical teaching--An assignment, as described in §228.2 [§228.35] of this title (relating to Definitions [Preparation Program Coursework and/or Training]).

(10) Completer--A person who has met all the requirements of an approved educator preparation program. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(11) Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(c) of this title (relating to Determination of Accreditation Status).

(12) Content Pedagogy Test--Examination listed in the column labeled "Required Content Pedagogy Test(s)" in Figure 19 TAC §230.21(e).

(13) Cooperating teacher--An individual, as described in §228.2 of this title (relating to Definitions), who [guides, assists, and] supports a candidate during a candidate's clinical teaching experience [assignment].

(14) Demographic group--Male and female, as to gender; and African American, Hispanic, White, and Other, as to race and ethnicity.

(15) Educator preparation program--An entity approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes or categories.

(16) Educator preparation program data--Data reported to meet requirements under the Texas Education Code, §21.045(b) and §21.0452.

(17) Examination--An examination or other test required by statute, or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs

an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(18) Field supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who is hired by an educator preparation program to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(19) First-year teacher--For purposes of the Texas Education Code, §21.045(a)(2), and its implementation in this chapter, an individual in his or her first year of employment as a classroom teacher.

(20) GPA--Grade point average.

(21) GRE®--Graduate Record Examinations®.

(22) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

(23) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

(24) Internship--An assignment, as described in §228.2 [§228.35] of this title (relating to Definitions [Preparation Program Coursework and/or Training]).

(25) Mentor--An individual, as described in §228.2 of this title (relating to Definitions), who [guides, assists, and] supports a candidate during a candidate's internship experience [assignment].

~~[(26) New teacher--For purposes of the Texas Education Code, §21.045(a)(5), and its implementation in this chapter, an individual in his or her first year of employment as a classroom teacher under a standard certificate.]~~

~~[(27) Pedagogy Test--Examination listed in the column labeled "Pedagogical Requirement(s)" in Figure: 19 TAC §230.21(e).]~~

~~[(28) Practicum--An assignment, as described in §228.2 [§228.35] of this title (relating to Definitions [Preparation Program Coursework and/or Training]).]~~

~~[(29) SAT®--The college entrance examination from the College Board.]~~

~~[(30) Site supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who [guides, assists, and] supports a candidate during a candidate's practicum experience [assignment].]~~

~~[(31) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.]~~

§229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP candidates, first-year teachers, [new teachers,] beginning teachers, field supervisors, administrators, mentors, site supervisors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsections (e) and (f) of this section.

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the Texas

Education Code (TEC), §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually by September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by principals shall be submitted by June 15 of any academic year in which an administrator has had experience with a first-year teacher who was a candidate or completer at [participant in] an EPP. All surveys and information required to be submitted pursuant to this chapter by first-year [new] teachers shall be submitted by June 15 of the first full academic year after the teacher completed the requirements of an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 31 of the academic year in which the candidate completed the requirements of an EPP.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.
Figure: 19 TAC §229.3(f)(1) (No change.)

(2) Candidates in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the TEA of the survey is a requirement for completion of an EPP.

(3) Administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success based on experience with first-year teachers who were candidates or completers [participants] in an EPP.

(4) First-year [New] teachers in a Texas public school, including an open-enrollment charter school, shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497

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SUBCHAPTER B. ACCOUNTABILITY
SYSTEM FOR EDUCATOR PREPARATION
ACCREDITATION STATUSES

19 TAC §229.4

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The State Board for Educator Certification (SBEC) shall determine the accreditation status of an educator preparation program (EPP) at least annually, based on the following accountability performance indicators, disaggregated by demographic group and other requirements of this chapter and determined with the formulas and calculations included in the figure provided in §229.1(c) of this title (relating to General Provisions and Pur-

pose of Accountability System for Educator Preparation Programs). Data will be used only if the following indicators were included in the accountability system for that academic year. Except for the 2019-2020 and 2020-2021 academic years, when the data described in paragraphs (1)-(5) of this subsection will be reported to EPPs and will not be used to determine accreditation statuses, EPP accreditation statuses shall be based on:

(1) the EPP candidates' performance on pedagogy tests and content pedagogy tests. The EPP candidates' performance on pedagogy tests and content pedagogy tests shall provide separate accountability performance indicators for EPPs;

(A) For both pedagogy tests and content pedagogy tests, the performance standard shall be the percent of individuals admitted after December 26, 2016, who passed an examination within the first two attempts, including those examinations attempted after the individual has completed the EPP or when the EPP has not recommended the individual for a standard certificate. The pass rate is based solely on the examinations approved by the EPP. Examinations taken before admission to the EPP or specific examinations taken for pilot purposes are not included in the pass rate.

~~[(B) For the 2021-2022 and 2022-2023 academic years, the Performance Assessment for School Leaders (PASL) shall be treated as a content pedagogy test.]~~

(B) ~~[(C)]~~ For pedagogy tests, the performance standard shall be a pass rate of 85%.

(C) ~~[(D)]~~ For content pedagogy tests, the performance standard shall be a pass rate of 75%.

(2) the results of appraisals of first-year teachers by administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be 70% of first-year teachers from the EPP who are appraised as "sufficiently prepared" or "well prepared";

(3) the growth of students taught by beginning teachers as indicated by the STAAR Annual Growth Points [~~Progress Measure~~], determined at the student level as described in Figure: 19 TAC §97.1001(b) of Part II of this title (relating to Accountability Rating System), and aggregated at the teacher level as described in Figure: 19 TAC §229.1(c) of this title. The performance standard shall be 70% of beginning teachers from the EPP reaching the individual performance threshold. For the 2023-2024 academic year, [~~The first two academic years for which the Texas Education Agency (TEA) has data necessary to calculate~~] this performance standard [~~following the 2019-2020 academic year~~] will be a reporting year [years] only and will not be used to determine accreditation status;

(4) the results of data collections establishing EPP compliance with SBEC requirements [~~specified in §228.35(g) of this title (relating to Preparation Program Coursework and/or Training)~~], regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship. The frequency and duration of field supervision shall provide one accountability performance indicator, and the quality of field supervision shall provide a separate accountability performance indicator;

(A) The performance standard as to the frequency, duration, and required documentation of field supervision shall be that the EPP meets the requirements [~~of documentation of §228.35(g) of this title~~] for 95% of the EPP's candidates. EPPs that [~~who~~] do not meet the standard of 95% for the aggregated group or for any disaggregated demographic group but have only one candidate not meet the requirement in the aggregated or any disaggregated group has met the standard for that group.

(i) For the 2023-2024 and 2024-2025 academic years, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Subchapter F, of this title (relating to Support for Candidates During Required Clinical Experiences) that were effective August 31, 2024.

(ii) Beginning in the 2025-2026 academic year, individuals will be evaluated against the frequency and duration requirements in Chapter 228, Subchapter F, of this title that were effective beginning September 1, 2024.

(B) The performance standard for quality shall be 90% of candidates rating the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of first-year [new] teachers administered at the end of the first year of teaching as a teacher of record [under a standard certificate]. The performance standard shall be 70% of teachers responding that they were "sufficiently prepared" or "well prepared" by their EPP.

(b) Accreditation status assignment. All approved EPPs may be assigned an accreditation status based on their performance in the Accountability System for Educator Preparation Programs (ASEP) Index system, as described in Figure: 19 TAC §229.1(c) of this title.

(1) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the standard of 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(2) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(3) Accredited-Warned status.

(A) An EPP shall be assigned Accredited-Warned status if the EPP accumulates 80% or greater but less than 85% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Warned status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or Texas Education Code (TEC), Chapter 21.

(4) Accredited-Probation status.

(A) An EPP shall be assigned Accredited-Probation status if the EPP accumulates less than 80% of the possible points in the ASEP Index system as described in Figure: 19 TAC §229.1(c) of this title.

(B) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(5) Not Accredited-Revoked status.

(A) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(B) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one

year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(C) An EPP may be assigned Not Accredited-Revoked status if the EPP fails to pay the required ASEP technology fee by the deadline set by TEA as prescribed in §229.9(7) of this title (relating to Fees for Educator Preparation Program Approval and Accountability).

(D) An EPP may be assigned Not Accredited-Revoked status if the SBEC determines that the EPP has violated SBEC rules, orders, and/or TEC, Chapter 21.

(E) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(F) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(G) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(c) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by demographic group, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 10. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

(2) For an EPP candidate group, aggregated or disaggregated by demographic group, where the group contains 10 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) If the current year's EPP candidate group, aggregated or disaggregated by demographic group, contained between one and 10 individuals, that group performance shall be combined with the group performance from the next most recent prior year subsequent to the 2020-2021 academic year for which there was at least one individual, and if the two-year cumulated group contains more than 10 individuals, then the two-year cumulated group performance must be measured against the standards in the current year. The two-year cumulated group shall not include group performance from years prior to the 2021-2022 academic year.

(4) If the two-year cumulated EPP candidate group described in subsection (c)(3) of this section, aggregated or disaggregated by demographic group, contains between one and 10 individuals, then the two-year cumulated group performance shall be combined with the next most recent group performance subsequent to the 2020-2021 academic year for which there was at least one individual. The three-year cumulated group performance must be measured against the standards in the current year, regardless of how small the cumulated number of group members may be. When evaluating a three-year cumulated group of fewer than 10 individuals, the candidate group will be measured against the performance standard of the current year, or a performance standard of up to one candidate failing to meet the

requirement, whichever is more favorable. The three-year cumulated group performance shall not include group performance from years prior to the 2021-2022 academic year.

(5) In any reporting year in which the EPP candidate group, aggregated or disaggregated by demographic group, does not meet the necessary number of individuals needed to measure against performance standards for that year, for all indicators, the accreditation status will continue from the prior year. Any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. If an EPP has a status of Accredited-Probation carried over as a result of this subsection, the year in which the EPP has the carried over status will not count as a consecutively measured year for the purpose of subsection (b)(5)(A) of this section. The SBEC may modify the sanction as the SBEC deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



SUBCHAPTER D. CONTINUING APPROVAL PROCEDURES

19 TAC §229.6

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal

of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.6. *Continuing Approval.*

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.13 [~~§228.10(b)~~] of this title (relating to Continuing Educator Preparation Program Approval [~~Approval Process~~]), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program-approval components specified in §228.11 [~~§228.10(a)~~] of this title (relating to New Entity Approval [~~Approval Process~~]).

(b) After a continuing approval review pursuant to §228.13 [~~§228.10(b)~~] of this title, if the Texas Education Agency (TEA) staff finds that an EPP is in compliance with SBEC rules and/or Texas Education Code (TEC), Chapter 21, the TEA staff shall issue a proposed recommendation for SBEC to approve the renewal of an EPP. After a continuing approval review pursuant to §228.13 [~~§228.10(b)~~] of this title or a complaint investigation pursuant to Chapter 228, Subchapter G, of this title (relating to Complaints and Investigations) [~~§228.70 of this title (relating to Complaints and Investigations Procedures)~~], if the TEA staff finds that an EPP has failed to comply with SBEC rules and/or the TEC, Chapter 21, and the EPP does not obtain compliance within four months, the TEA staff shall recommend that the SBEC sanction the EPP. The TEA staff may recommend that the SBEC action include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations), and an EPP shall be entitled to an informal review of the proposed recommendation, under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal review, a final recommendation will be issued by the TEA staff. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review procedure.

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

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

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SUBCHAPTER F. REQUIRED FEES

19 TAC §229.9

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(d), which states that the SBEC may adopt a fee for the approval and renewal of approval of an EPP, for the addition of a certificate or field of certification, and to provide for the administrative cost of appropriately ensuring the accountability of EPPs; TEC, §21.043(b) and (c), which require SBEC to provide EPPs with data, as determined in coordination with stakeholders, based on information reported through the Public Education Information Management System (PEIMS) that enables an EPP to assess the impact of the program and revise the program as needed to improve; TEC, §21.0441(c) and (d), which require the SBEC to adopt rules setting certain admission requirements for EPPs; TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; TEC, §21.045, which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs

of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding EPPs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.041(a), (b)(1), and (d); 21.043(b) and (c); 21.0441(c) and (d); 21.0443; 21.045; 21.0451; and 21.0452.

§229.9. *Fees for Educator Preparation Program Approval and Accountability.*

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--\$9,000.

(2) Five-year continuing approval review visit pursuant to §228.13 [~~§228.10(b)~~] of this title (relating to Continuing Educator Preparation Program Approval [~~Approval Process~~])--\$4,500.

(3) Discretionary continuing approval review visit pursuant to §228.13 [~~§228.10(b)~~] of this title--\$4,500.

(4) Addition of new certification category or addition of clinical teaching--\$500.

(5) Addition of each new class of certificate--\$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, and practicums--\$500.

(7) Accountability System for Educator Preparation Programs technology fee--\$35 per admitted candidate.

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

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11

The State Board for Educator Certification (SBEC) proposes an amendment to 19 Texas Administrative Code (TAC) §230.11, concerning professional educator preparation and certification.

The proposed amendment would expand the options for demonstrating English language proficiency (ELP).

BACKGROUND INFORMATION AND JUSTIFICATION: At the February 2024 SBEC meeting, Texas Education Agency (TEA) staff provided the Board with an overview of the history of the ELP requirement and confirmed that regardless of the pathway to certification in Texas, demonstration of ELP is required for all candidates. TEA staff also posed key questions for the Board's consideration regarding current requirements in rule and possible updates for the demonstration of ELP. TEA staff anchored the conversation with the Board around required performance on the Test of English as a Foreign Language internet-Based Test (TOEFL-iBT), the list of countries approved by the SBEC to satisfy demonstration of ELP, the addition of U.S. territories to exempt individuals from the ELP requirement, and the potential use of standard certification obtained in another state by individuals licensed to teach in other countries.

At the April 2024 SBEC meeting, TEA staff provided a follow-up discussion item, including recommendations for amendments to 19 TAC Chapter 230 to be presented for consideration and action by the Board at the July SBEC meeting. The Board provided final direction on how to move forward with the proposal.

The following is a description of the proposed amendment.

Proposed Amendment to Required Performance on the TOEFL-iBT

The proposed amendment to §230.11(b)(5)(B) would update TOEFL-iBT score requirements from a specific score for each of the four sections (24 for Speaking, 22 for Listening, 22 for Reading, and 21 for Writing) to any score that falls within the range identified for performance at the High-Intermediate Level for all four sections of the test.

Proposed Amendment Related to U.S. Territories and the ELP Requirement

Proposed new §230.11(b)(5)(A) would add the phrase, "or one of its territories," to allow degrees obtained in the U.S. territories to also count toward meeting the ELP requirement.

Proposed Amendment to Add Countries to the List Approved by the SBEC for Exemption from the ELP Requirement

The proposed amendment to Figure: 19 TAC §230.11(b)(5)(C) would add Cameroon, Kenya, Philippines, South Africa, Uganda, Zambia, and Zimbabwe to the list of countries approved for exemption from the ELP requirement and would strike American Samoa to align with proposed changes that would incorporate all U.S. territories in meeting the requirement.

Proposed Amendment to Include an Additional Option to Meet the ELP Requirement

Proposed new §230.11(b)(5)(D) would allow an individual applying for the out-of-country credentials review who also holds a standard certificate issued in another state where exams were taken and passed to be eligible for consideration of exemption from ELP requirements.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, there is no additional fiscal impact on state and local governments and that there are no additional costs to entities required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by including additional provisions for individuals to meet the ELP requirement.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. McLoughlin has determined that for the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be increased flexibility in demonstrating ELP. The proposal would reduce the number of TOEFL-iBT test attempts for some candidates. The addition of countries approved by the SBEC to satisfy the ELP requirement would save TOEFL-iBT testing fees for some candidates. Also, the future ability to utilize a standard certificate issued by another state department of education would also be a TOEFL-iBT test fee savings for some candidates. TEA staff has determined there is an anticipated savings to persons required to comply with the proposal. The proposal would allow an individual to score within a range of scores on the TOEFL-iBT, as opposed to a required specific scaled score. This would have a potential savings of approximately \$200 per exam for an estimated 114 individuals per fiscal year (FY) who may have needed to retake the test to meet the minimum scaled score requirement. This would result in a savings of \$22,800 for each year of FYs 2025-2028 for the individuals who were able to demonstrate ELP outside of TOEFL-iBT testing.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA staff has determined that the proposal

would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins August 9, 2024, and ends September 9, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal during the September 20, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), (2), and (4), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B, specify the classes of educator certificates to be issued, including emergency certificates, and specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to TEC, §21.052.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.003(a), 21.031, and 21.041(b)(1), (2), (4), and (5).

§230.11. General Requirements.

(a) The only credits and degrees acceptable for certification of educators are those earned from and conferred by accredited institutions of higher education. All credit hour requirements for certification are semester credit hours or their equivalent.

(b) An applicant for a Texas educator certificate must:

- (1) be at least 18 years of age;
- (2) submit to the criminal history review required by the Texas Education Code (TEC) §22.0831, not be disqualified by the TEC, §21.058, §21.060, or other Texas statute, and not be subject to administrative denial pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) or a pending proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);
- (3) not be disqualified by federal law;
- (4) be willing to support and defend the constitutions of the United States and Texas;
- (5) be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. English language proficiency shall be evidenced by one of the following:

(A) completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States or one of its territories; or

(B) verification of a minimum scaled score that falls within the High-Intermediate level in each section on the Test of English as a Foreign Language internet-Based Test (TOEFL-iBT) [minimum scaled scores on the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) of 24 for speaking, 22 for listening, 22 for reading, and 21 for writing]; or

(C) an undergraduate or graduate degree that was earned at an institution of higher education in a country outside of the United States listed in the figure provided in this subparagraph; or [-] Figure: 19 TAC §230.11(b)(5)(C) [Figure: 19 TAC §230.11(b)(5)(C)]

(D) a standard certificate issued by the department of education in another state where examinations for the certificate were taken and passed;

(6) successfully complete appropriate examinations prescribed in §230.21 of this title (relating to Educator Assessment) for the educator certificate sought; and

(7) satisfy one or more of the following requirements:

(A) complete the requirements for certification specified in this chapter, Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), Chapter 239 of this title (relating to Student Services Certificates), Chapter 241 of this title (relating to Certification as Principal), or Chapter 242 of this title (relating to Superintendent Certificate), and be recommended for certification by an approved educator preparation program (EPP);

(B) qualify under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);

(C) qualify under §230.105 of this title (relating to Issuance of Additional Certificates Based on Examination);

(D) qualify for a career and technical education certificate based on skill and experience specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or

(E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(c) An educator who has received a State Board for Educator Certification (SBEC)-issued standard certificate shall not be required to demonstrate English language proficiency as prescribed in subsection (b)(5)(B) and (C) of this section for purposes of admission into an EPP to obtain additional SBEC-issued certifications.

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 July 29, 2024.

TRD-202403464

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.3, 97.4, 97.6

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes amendments to §97.3, concerning What Condition to Report and What Isolates to Report or Submit; §97.4, concerning When and How to Report a Condition or Isolate; and §97.6, concerning Reporting and Other Duties of Local Health Authorities and Regional Directors.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 969, 87th Regular Session, 2021, Kolkhorst, and to add melioidosis and *Cronobacter spp.* in infants as notifiable conditions in Texas.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.3 updates the public website link available for reviewing the summary list of notifiable conditions, adds *Cronobacter spp.* in infants and melioidosis as notifiable conditions in Texas, and corrects punctuation.

The proposed amendment to §97.4 updates the immediately notifiable conditions by adding melioidosis; removes faxing as an option for reporting immediately notifiable conditions; and identifies the preferred reporting option as electronic data transmission but allows persons to report via telephone or fax for all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection. Additionally, this amendment removes mail or courier as reporting options and corrects punctuation. DSHS will allow a transition period and will continue to accept HIV reporting via mail while 25 TAC §97.134 is amended.

The proposed amendment to §97.6 lists the preferred reporting option as electronic data transmission but allows persons to report via telephone or fax; removes mail or courier as reporting options; and requires any notifiable conditions reported via telephone be followed up with an electronic data transmission through an approved electronic means within 24 hours of the original notification.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined during the first five years the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of DSHS employee positions;

- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to DSHS;
- (5) the proposed rules will not create a new regulation;
- (6) the proposed rules will expand existing regulation(s);
- (7) the proposed rules will not change the number of individuals subject to the rule(s); and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules. Small or micro-businesses and rural communities with IT infrastructure or resource limitations will have the opportunity to continue to report notifiable conditions via telephone or fax.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Dr. Varun Shetty, Associate Commissioner, has determined for the first five years the rules are in effect, the public benefit will be improved ability of public health entities to plan and implement response and mitigation measures, enhance public surveillance and timely reporting, and increase the availability of public health data in Texas. Additionally, making melioidosis and *Cronobacter spp.* in infants reportable will increase information about these rare but potentially fatal diseases.

Christy Havel Burton, Chief Financial Officer, has also determined for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because alternative reporting options for notifiable conditions are available to those experiencing IT infrastructure or resource limitations.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 West 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Com-

ments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R052" in the subject line.

STATUTORY AUTHORITY

These amendments are authorized by Texas Government Code §531.0055, and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code Chapter 81 (Communicable Disease Prevention and Control Act), which authorizes the Executive Commissioner of HHSC to identify reportable diseases and prescribe the form and method for reporting.

The amendments implement Texas Government Code Chapter 531 and Texas Health and Safety Code Chapters 81 and 1001.

§97.3. *What Condition to Report and What Isolates to Report or Submit.*

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at <https://www.dshs.texas.gov/idcu/investigation/conditions/>. [<http://www.dshs.state.tx.us/ideu/investigation/conditions/>.] Copies are filed in the Emerging and Acute Infectious Disease Unit [Branch], Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases and^[f] infections are reportable:

- (i) acquired immune deficiency syndrome (AIDS);
- (ii) amebic meningitis and encephalitis;
- (iii) anaplasmosis;
- (iv) ancylostomiasis;
- (v) anthrax;
- (vi) arboviral infections, including[, but not limited to,] those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, West Nile (WN) virus, and Zika virus;
- (vii) ascariasis;
- (viii) babesiosis;
- (ix) botulism, adult and infant;
- (x) brucellosis;
- (xi) campylobacteriosis;
- (xii) *Candida auris*;

- (CRE);
- (xiii) carbapenem resistant *Enterobacteriaceae*
- (xiv) Chagas disease;
- (xv) chancroid;
- (xvi) chickenpox (varicella);
- (xvii) *Chlamydia trachomatis* infection;
- (xviii) *Cronobacter spp. in infants, invasive*;
- (xix) cryptosporidiosis;
- (xx) cyclosporiasis;
- (xxi) diphtheria;
- (xxii) echinococcosis;
- (xxiii) ehrlichiosis;
- (xxiv) fascioliasis;
- (xxv) gonorrhea;
- (xxvi) *Haemophilus influenzae*₂[?] invasive;
- (xxvii) Hansen's disease (leprosy);
- (xxviii) hantavirus infection;
- (xxix) hemolytic uremic syndrome (HUS);
- (xxx) hepatitis, including hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally (child), any hepatitis B infection identified prenatally or at delivery (mother), acute hepatitis C infection, and acute hepatitis E infection;
- (xxxi) human immunodeficiency virus (HIV) infection;
- (xxxii) influenza-associated pediatric mortality;
- (xxxiii) legionellosis;
- (xxxiv) leishmaniasis;
- (xxxv) listeriosis;
- (xxxvi) Lyme disease;
- (xxxvii) malaria;
- (xxxviii) measles (rubeola);
- (xxxix) melioidosis;
- (xl) meningococcal infection, invasive;
- (xli) mumps;
- (xlii) novel coronavirus;
- (xliii) novel influenza;
- (xliv) paragonimiasis;
- (xlv) pertussis;
- (xlvi) plague;
- (xlvii) poliomyelitis, acute paralytic;
- (xlviii) poliovirus infection, non-paralytic;
- (xlix) prion diseases, such as Creutzfeldt-Jakob disease (CJD);
- (l) Q fever;
- (li) rabies;

- (*lii*) rubella (including congenital);
- (*liii*) salmonellosis, including typhoid fever;
- (*liiv*) Shiga toxin-producing *Escherichia coli* infection;
- (*liv*) shigellosis;
- (*lvi*) smallpox;
- (*lvii*) spotted fever group rickettsioses (such as Rocky Mountain spotted fever);
- (*lviii*) streptococcal disease: *Streptococcus pneumoniae*₂[₂] invasive;
- (*lix*) syphilis;
- (*lx*) *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis;
- (*lxi*) tetanus;
- (*lxii*) tick-borne relapsing fever;
- (*lxiii*) trichinosis;
- (*lxiv*) trichuriasis;
- (*lxv*) tuberculosis (~~[(f)]~~*Mycobacterium tuberculosis* complex);
- (*lxvi*) tuberculosis infection;
- (*lxvii*) tularemia;
- (*lxviii*) typhus;
- (*lxix*) vancomycin-intermediate *Staphylococcus aureus* (VISA);
- (*lxx*) vancomycin-resistant *Staphylococcus aureus* (VRSA);
- (*lxxi*) *Vibrio* infection, including cholera (specify species);
- (*lxxii*) viral hemorrhagic fever; and
- (*lxxiii*) yersiniosis.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means.

(3) Minimal reportable information requirements. The minimal information that must ~~[shalt]~~ be reported for each disease is as follows.₂[₂]

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must ~~[shalt]~~ be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).₂[₂]

(B) For ~~[for]~~ tuberculosis disease - complete name, date of birth, physical address and county of residence, country of origin, and information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and dates ~~[date(s)]~~; all information necessary to complete the most recent versions of department reporting forms: Report of Case and Patient Services, Report of Follow-up and Treatment for Contacts to TB Cases and Suspects,₂[₂] and Report of Verified Case of Tuberculosis; laboratory results used to guide prescribing, monitoring, or modifying antibiotic treatment regimens for tuberculosis, including ~~[to include, but~~

~~not limited to,]~~ liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care, including ~~[to include, but not limited to,]~~ histories and physical examinations, discharge summaries, and progress notes; records of medication administration, including ~~[to include, but not limited to,]~~ directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court-ordered ~~[court ordered]~~ management of tuberculosis.

(C) For ~~[for]~~ contacts to a known case of tuberculosis - complete name,₂[₂] date of birth,₂[₂] physical address,₂[₂] county of residence,₂[₂] evaluation and disposition,₂[₂] and all information necessary to complete the most recent versions of department reporting forms: Report of Follow-up and Treatment for Contacts to TB Cases and Suspects₂[₂] and Report of Case and Patient Services.₂[₂]

(D) For ~~[for]~~ other persons identified with tuberculosis infection - complete name,₂[₂] date of birth,₂[₂] physical address and county of residence,₂[₂] country of origin,₂[₂] diagnostic information,₂[₂] treatment information,₂[₂] medical and population risks,₂[₂] and all information necessary to complete the most recent version ~~[versions]~~ of the department's ~~[department]~~ reporting form,₂[₂] Report of Case and Patient Services.

(E) For ~~[for]~~ hepatitis B (chronic and acute) identified prenatally or at delivery - mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant.₂[₂]

(F) For ~~[for]~~ hepatitis A, B, C, and E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician or practitioner name, address, and telephone number.₂[₂]

(G) For ~~[for]~~ hepatitis B, perinatal infection - name of infant; date of birth; sex; race and₂[₂] ethnicity; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;₂[₂] and hepatitis B laboratory test results.₂[₂]

(H) For ~~[for]~~ chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history.₂[₂]

(I) For ~~[for]~~ Hansen's disease - name; date of birth; sex; race and ethnicity; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education and [/]employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; disease type (i.e., tuberculoid, borderline, and lepromatous); date initial drugs prescribed and name of drugs; name, date of birth, and relationship of household contacts; and name, address, and telephone number of physician or practitioner.₂[₂]

(J) For ~~[for]~~ novel influenza investigations occurring during an influenza pandemic ~~[-]~~ minimal reportable information on

individual cases, a subset of cases or aggregate data will be specified by the department.[;]

(K) For [fɔr] all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, specimen source, test type, and clinical indicators), date of onset, and physician or practitioner name, address, and telephone number.[; and]

(L) Other [ɔðər] information may be required as part of an investigation in accordance with Texas Health and Safety Code[;] §81.061.

(4) Diseases requiring submission of cultures. Pure cultures, or specimens as indicated below, must be submitted and accompanied by a current department Specimen Submission Form for:

(A) anthrax (*Bacillus anthracis*);

(B) botulism, adult and infant (*Clostridium botulinum*);

(C) brucellosis (*Brucella* species);

(D) *Candida auris*;

(E) diphtheria (*Corynebacteria diphtheriae* from any site);

(F) all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites);

(G) listeriosis (*Listeria monocytogenes*);

(H) meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites or purpuric lesions);

(I) plague (*Yersinia pestis*);

(J) salmonellosis, including typhoid fever (*Salmonella* species);

(K) Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated);

(L) *Staphylococcus aureus* with a vancomycin minimum inhibition concentration (MIC) greater than 2 micrograms per milliliter ($\mu\text{g/mL}$);

(M) all *Streptococcus pneumoniae*, invasive, in children under five years old (*Streptococcus pneumoniae* from normally sterile sites);

(N) tuberculosis (*Mycobacterium tuberculosis* complex);

(O) tularemia (*Francisella tularensis*);

(P) vibriosis (*Vibrio* species); and

(Q) any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern may require submission of cultures or specimens.

{(4) Diseases requiring submission of cultures. For all anthrax (*Bacillus anthracis*); botulism, adult and infant (*Clostridium botulinum*); brucellosis (*Brucella* species); *Candida auris*; diphtheria (*Corynebacteria diphtheriae* from any site); all *Haemophilus influenzae*, invasive, in children under five years old (*Haemophilus influenzae* from normally sterile sites); listeriosis (*Listeria monocytogenes*); meningococcal infection, invasive (*Neisseria meningitidis* from normally sterile sites or purpuric lesions); plague (*Yersinia pestis*);

salmonellosis, including typhoid fever (*Salmonella* species); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 $\mu\text{g/mL}$; all *Streptococcus pneumoniae*, invasive, in children under five years old (*Streptococcus pneumoniae* from normally sterile sites); tuberculosis (*Mycobacterium tuberculosis* complex); tularemia (*Francisella tularensis*); and vibriosis (*Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.]

(5) Laboratory reports. Reports from laboratories must [shall] include patient name, identification number, address, telephone number, age, date of birth, sex, race and ethnicity; specimen submitter name, address, and phone number; specimen type; date specimen collected; disease test and test result; normal test range; date of test report; and physician or practitioner name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, tuberculosis (*Mycobacterium tuberculosis* complex) in animals other than those housed in research facilities, and plague. All [Also, all] non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas must [shall] be reported. All [; all] non-negative rabies tests performed in Texas must [will] be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that must [shall] be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal [animal(s)] owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code[;] §81.061.

§97.4. *When and How to Report a Condition or Isolate.*

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases must [shall] be reported immediately by telephone [phone] to the local health authority or the appropriate Department of State Health Services regional epidemiology office:

(A) anthrax;

(B) botulism;

(C) diphtheria;

(D) measles (rubeola);

(E) melioidosis;

(F) meningococcal infection, invasive;

(G) novel coronavirus;

(H) novel influenza;

(I) poliomyelitis, acute paralytic;

(J) plague;

(K) rabies;

(L) smallpox;

(M) tularemia;

- (VISA); (N) vancomycin-intermediate *Staphylococcus aureus*
- (VRSA); (O) vancomycin-resistant *Staphylococcus aureus*
- (P) viral hemorrhagic fever;
- (Q) yellow fever; and
- (R) any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern.

(2) The following notifiable conditions must [shall] be reported by electronic data transmission [fax] or telephone [phone] within one working day of identification as a suspected case:

- (A) brucellosis;
- (B) *Candida auris*;
- (C) carbapenem resistant *Enterobacteriaceae* (CRE);
- (D) hepatitis A, acute;
- (E) hepatitis B, perinatal infection;
- (F) influenza-associated pediatric mortality;
- (G) mumps;
- (H) pertussis;
- (I) poliovirus infection, non-paralytic;
- (J) Q fever;
- (K) rubella (including congenital);
- (L) syphilis infection in pregnant females;
- (M) tuberculosis ([f]*Mycobacterium tuberculosis* complex); and
- (N) *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must [shall] be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(4) Tuberculosis antibiotic susceptibility results must [should] be reported by laboratories no later than one week after they first become available.

(5) For all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection, reports of disease must [shall] be made no later than one week after a case or suspected case is identified.

(A) The preferred option for reporting is electronic data transmission, but reports [Transmittal] may be made by telephone or [:] fax. Any electronic data transmission of the report must provide protection against unauthorized disclosure and utilize a format prescribed by the receiving agency[; mail, courier, or electronic transmission].

f(i) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

f(ii) Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal, be by express written agreement with the receiving agency, utilize a format prescribed by the receiving agency, and be validated as accurate.]

(B) A health information exchange (HIE) organization as defined by Texas Health and Safety Code[.] §182.151, may transmit reports on behalf of providers required to report in §97.2(a) - (d) of this chapter [title] (relating to Who Shall Report) in accordance with Texas Health and Safety Code[.] Chapter 182, Subchapter D₂[.] Health Information Exchanges, and all other state and federal law as follows.[:]

(i) The receiving agency has published message standards.

(ii) A method of secure transmission has been established between the HIE and the receiving agency, and transmissions have been tested with the receiving agency and established as meeting the data exchange standards and conveying information accurately.

(iii) Reporting by the HIE has been requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person [who is] required to report health-related information.

(iv) HIE reports may be made in addition to but do [shall] not replace reports listed in paragraphs (1) - (2) of this subsection.

(6) All diseases requiring submission of cultures in §97.3(a)(4) of this chapter [title] (relating to What Condition to Report and What Isolates to Report or Submit) must [shall] be submitted as they become available.

(b) Animals. Reportable conditions affecting animals must [shall] be reported within one working day following the diagnosis.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Department of State Health Services (department) central office.

(b) Those notifiable conditions identified as public health emergencies in §97.4(a) of this chapter [title] (relating to When and How to Report a Condition or Isolate) must [shall] be reported immediately to the department by telephone at (888) 963-7111.

(c) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis must [shall] be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(d) For notifiable conditions not listed in subsections (b) and (c) of this section, the local health authority or the department's regional director collects [shall collect] reports of disease and transmits [transmit] the information listed in §97.3(a)(3) of this chapter [title] (relating to What Condition to Report and What Isolates to Report or Submit) at weekly intervals, as directed by the department.

(e) The preferred option for reporting is electronic data transmission, but reports may be made by telephone or fax. [Transmittal may be by telephone, mail, courier, or electronic transmission.]

f(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(1) [(2)] Any electronic data transmission of the report [reports] must provide [at least the same degree of] protection against unauthorized disclosure, and utilize a format prescribed by the receiving agency [as those of mail or courier transmittal].

(2) For any notifiable condition reported by telephone, the person reporting must follow-up with an electronic data transmission through an approved electronic means within 24 hours of the original notification.

(f) The health authority must [shall] notify health authorities in other jurisdictions of a case or outbreak of a communicable disease [that has been reported] if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department will [shall] assist the health authority in providing such notifications upon request. The health authority of the area where the case or outbreak is diagnosed must [shall] report the case or outbreak to the department on the same basis as other reports.

(g) The health authority upon identification of a case or upon receipt of notification or report of disease, must [shall] take such action and measures as may be necessary to conform with the appropriate control measure standards. The health authority may, upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school, notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the health authority, if necessary or desirable in the administration of a regional or statewide public health program or policy.

(h) The health authority is empowered to close any public or private child-care facility, school, or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly must [shall] not reopen until permitted by the health authority who caused its closure.

(i) Persons reporting notifiable conditions in animals must [shall] be referred to the central office or the appropriate regional office of the department's Zoonosis Control Branch.

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 776-7676



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 356. GROUNDWATER MANAGEMENT

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) Subchapters A, B, C, E, and G, more specifically §§356.10, 356.20, 356.22, 356.31 - 356.35, 356.51 - 356.57, and §§356.70 - 356.72.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB is proposing this rulemaking primarily to modernize, update, and clarify rule language to facilitate groundwater management in the state and to clarify requirements for groundwater conservation districts. The proposed rule language adds more specificity and clarity regarding desired future condition packages, including non-relevant aquifer documentation; required elements of groundwater management plans; and brackish groundwater production zones. Additionally, the TWDB proposes adding definitions for brackish groundwater, conservation, groundwater management area, and non-relevant aquifer.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

31 TAC 356, Subchapter A

Section 356.10, Definitions, is proposed to be amended primarily to add the following new definitions: "brackish groundwater" in proposed §356.10(5), "conservation" in proposed §356.10(9), "groundwater management area" in proposed §356.10(15), and "non-relevant aquifer" in proposed §356.10(21). Other proposed amendments to §356.10 include correcting an error in §356.10(3) to refer to the "quantity" of water rather than the "quality" of water, renumbering the entire section to provide for new definitions and to modernize and clarify the rule language improving the readability of the rule.

31 TAC 356, Subchapter B

Sections 356.20 and 356.22 are proposed to be amended to modernize the rule language. No changes are proposed to §356.21 and that rule will not be published with this proposal.

31 TAC 356, Subchapter C

No changes are proposed to §356.30. That rule will not be published with this proposal.

Section 356.31 is proposed to be amended to update the title of the section and the due date by which desired future condition packages are due from a designated representative of each groundwater management area to the Executive Administrator of the TWDB. The proposed amendments also clarify "non-relevant" aquifer designations and required documentation submitted as part of a desired future condition package.

Section 356.32 is proposed to be amended to update the title of the section, to clarify the contents of the submission package for desired future conditions due to the TWDB, to require the submission of "non-relevant" aquifer information, and to renumber the section as appropriate.

Section 356.33 is proposed to be amended to require that a package submitting a desired future condition by the representative of a groundwater management area be signed and dated by that representative. The proposed amendments also clarify how the Executive Administrator of the TWDB will determine whether a submission package is administratively complete.

Section 356.34 is proposed to be amended to modernize the rule language.

Section 356.35 is proposed to be amended to clarify that a desired future condition package is what is declared administratively complete by the Executive Administrator.

31 TAC 356, Subchapter E

No changes are proposed to Section 356.50, and the rule will not be republished with this proposal.

Section 356.51 is proposed to be amended to modernize the rule language.

Section 356.52 is proposed to be amended to clarify that "management objectives," must correspond to a "management goal," to include proposed §356.52(a)(5) in the review of submitted management plans. Amendments to this section also include proposed §356.52(a)(7) requiring a consideration of water supply needs and water management strategies, in accordance with statute, and to modernize and re-number the rule language throughout the section.

Section 356.53 is proposed to be amended to modernize the rule language, to update the kind of information submitted to the Executive Administrator during review of a management plan, and to reflect that documentation of notice of the plan's adoption may be posted on the official website of a District. §356.53(a)(1) is amended to remove the requirement for hard-copy submissions of adopted management plans and to provide for only the submission of electronic versions of adopted management plans.

Section 356.54 is proposed to be amended to clarify that management plans are "revised" rather than "amended" when an adopted plan is not approved by the Executive Administrator.

Section 356.55 is proposed to be amended to modernize the rule language.

Section 356.56 is proposed to be amended to update the title of the section, to add new §356.56(a) clarifying the process of Executive Administrator approval of amended management plans, to provide that changes to approved management plans will be defined as "amendments" rather than "addendums," and to re-number the section.

Section 356.57 is proposed to be amended to update the rule language.

31 TAC 356 Subchapter G

Section 356.70 is proposed to be amended to update §356.70(d) to provide the TWDB the authority to amend a designated brackish groundwater production zone on its own, or by request by a district. In addition, §356.70(e) is proposed to be added to the rule requiring the TWDB to provide public notice of an amendment related to a designated brackish groundwater production zone.

Section 356.71 is proposed to be amended to update the rule language.

Section 356.72 is proposed to be amended to require districts to submit certain report information to the TWDB and to clarify and update the language.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments from the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments and there is no change in costs with the proposed amendments to the rule because the proposed rule revisions are to modernize and clarify existing rule language.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary for groundwater management resources of this state as authorized by the Texas Water Code and are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as the rules are necessary for groundwater management resources of this state. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the proposed rule as it modernizes, updates, and clarifies rule language to facilitate groundwater management in the state and certain requirements for groundwater conservation districts.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to update and clarify existing rules that are necessary for

groundwater management in the state and certain requirements for groundwater conservation districts.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code Section 15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, Section 36.1073, §36.108, §36.1084, §36.1085, and §36.3011. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to update and clarify existing rules that are necessary for groundwater management in the state and certain requirements for groundwater conservation districts. The proposed rule would substantially advance this stated purpose by aligning definitions with agency and industry practice and providing greater detail for desired future condition packages and required elements of groundwater management plans.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency charged with the delineation of groundwater management areas in order to assist with the conservation, preservation, protection and prevention of the waste of the state's groundwater resources.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other

words, this rule updates the state's existing rules that facilitate groundwater management without burdening or restricting or limiting the owner's right to property and reducing its value by 25% or more. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 356" in the subject line of any comments submitted.

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.10. Definitions.

The following words and terms, when used in this chapter, will [shall] have the following meanings unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 36, Groundwater Conservation Districts, that are not defined here will [shall] have the meanings provided in Chapter 36.

(1) Affected Person--An owner of land in the management area, a district in or adjacent to the management area, a regional water planning group with a water management strategy in the management area, a person or entity who holds or is applying for a permit from a district in the management area, a person or entity who has groundwater rights in the management area or any other person defined as affected with respect to a management area by Texas Commission on Environmental Quality rule.

(2) Agency--The Texas Water Development Board.

(3) Amount of groundwater being used on an annual basis--An estimate of the quantity [~~quality~~] of groundwater annually withdrawn or flowing from wells in an aquifer for at least the most recent five years that information is available. It may include data from Texas Water Development Board historical water use estimates, an estimate of exempt uses, and data collected by the district.

(4) Board--The governing body of the Texas Water Development Board.

(5) Brackish groundwater--Groundwater containing 1,000 to 9,999 milligrams per liter of total dissolved solids for the purposes of brackish groundwater production zone designations.

(6) [(5)] Brackish groundwater production zone operating permit--A permit issued by a district under Texas Water Code §36.1015.

(7) [(6)] Conjunctive use--The combined use of groundwater and surface water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.

(8) [(7)] Conjunctive surface water management issues--Issues related to conjunctive use such as groundwater or surface water quality degradation and impacts of shifting between surface water and groundwater during shortages.

(9) Conservation--Practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

(10) [(8)] Designated brackish groundwater production zone--An aquifer, subdivision of an aquifer, or geologic stratum designated under Texas Water Code §16.060(b)(5).

(11) [(9)] Desired future condition--The desired, quantified condition of groundwater resources (such as water levels, spring flows, or volumes) within a groundwater management area at one or more specified future times as defined by district representatives [~~participating groundwater conservation districts~~] within a groundwater management area as part of the joint planning process.

(12) [(10)] District--Any district or authority subject to Chapter 36, Texas Water Code.

(13) [(11)] Executive administrator--The executive administrator of the Texas Water Development Board or a designated representative.

(14) [(12)] Groundwater availability model [~~Groundwater Availability Model~~]--A regional groundwater flow model provided [~~approved~~] by the executive administrator.

(15) Groundwater management area--An area delineated and designated by the Texas Water Development Board as an area most suitable for management of groundwater resources through regional joint groundwater planning.

(16) [(13)] Major aquifer--An aquifer designated as a major aquifer by the board [~~in the State Water Plan~~].

(17) [(14)] Minor aquifer--An aquifer designated as a minor aquifer by the board [~~in the State Water Plan~~].

(18) [(15)] Modeled available groundwater [~~Modeled Available Groundwater~~]--The amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition.

(19) [(16)] Most efficient use of groundwater--Practices, techniques, and technologies that a district determines will provide the least consumption of groundwater for each type of use balanced with the benefits of using groundwater.

(20) [(17)] Natural resources issues--Issues related to environmental and other concerns that may be affected by a district's groundwater management plan and rules, such as impacts on endangered species, soils, oil and gas production, mining, air and water quality degradation, agriculture, and plant and animal life.

(21) Non-relevant aquifer--An aquifer or portion of an aquifer deemed not relevant for joint planning purposes by district representatives within a groundwater management area.

(22) [(18)] Office--State Office of Administrative Hearings.

(23) [(19)] Petition--A document submitted to a [~~the groundwater conservation~~] district by an affected person appealing the reasonableness of a desired future condition.

(24) [(20)] Projected water demand--The quantity of water needed on an annual basis according to the state water plan for the state water plan planning period.

(25) [(21)] Recharge enhancement--Increased recharge accomplished by the modification of the land surface, streams, or lakes to increase seepage or infiltration rates or by the direct injection of water into the subsurface through wells.

(26) [(22)] Relevant aquifer--An aquifer designated as a major or minor aquifer, or any undesignated aquifer deemed relevant for joint planning by district representatives within a groundwater management area.

(27) [(23)] State water plan--The most recent state water plan adopted by the board under Texas Water Code §16.051 (relating to State Water Plan).

(28) [(24)] Surface water management entities--Political subdivisions as defined by Texas Water Code Chapter 15 and identified from Texas Commission on Environmental Quality records that are granted authority under Texas Water Code Chapter 11 to store, take, divert, or supply surface water either directly or by contract for use within the boundaries of a district, including but not limited to river authorities or irrigation authorities.

(29) [(25)] Total estimated recoverable storage [~~Total Estimated Recoverable Storage~~]--The estimated amount of groundwater within an aquifer that accounts for recovery scenarios that range between 25% and 75% of the porosity-adjusted aquifer volume.

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

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-2776



SUBCHAPTER B. DESIGNATION OF GROUNDWATER MANAGEMENT AREAS

31 TAC §356.20, §356.22

The amendments are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.20. *Scope of Subchapter.*

This subchapter describes the agency's delineation and designation of groundwater management areas pursuant to the requirements of Texas Water Code §35.004.

§356.22. *Request to Amend Groundwater Management Area Boundaries.*

(a) A request to amend the boundaries of a groundwater management area must be made in writing [addressed] to the executive administrator and must contain the following:

- (1) a resolution supporting the change signed by each of the district representatives in each affected groundwater management area;
- (2) a demonstration that the geographic and hydrogeologic conditions require the proposed boundary change or an explanation that the change involves only an administrative correction; and
- (3) a copy of the notice and minutes of the public meeting held by the districts in each affected groundwater management area at which the districts approved the resolution in paragraph (1) of this subsection.

(b) The executive administrator will review the request and will notify the districts of his decision.

(1) If the proposed change involves only an administrative adjustment or correction to the boundary data files identified in §356.21 of this subchapter (relating to Designation of Groundwater Management Areas), the executive administrator will instruct agency staff to make the change and notify the districts upon completing the change.

(2) If the proposed change involves a substantive change to the boundaries of one or more groundwater management areas, the request will be presented to the board for authorization.

(c) The executive administrator may, in his discretion, make administrative corrections to the data files described in §356.21 of this subchapter. The executive administrator will notify the affected districts before making any correction.

(d) The executive administrator may, in his discretion, waive any of the requirements of this subchapter upon a showing of good cause.

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

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SUBCHAPTER C. SUBMISSION OF DESIRED FUTURE CONDITIONS

31 TAC §§356.31 - 356.35

The amendments are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.31. *Desired Future Condition Package Submission Date.*

(a) The desired future conditions for the relevant aquifers within the groundwater management area must be approved by a resolution adopted by a two-thirds vote of all the district representatives [districts] in a groundwater management area not later than January 5, 2027 [2022], in accordance with Texas Water Code §36.108. Subsequent desired future conditions must be proposed and finally adopted by the district representatives before the end of each successive five-year period after that date.

(b) A designated representative of the groundwater management area must provide complete copies of all documents required under §356.32 of this subchapter (relating to Desired Future Condition Package) to the executive administrator no later than 60 days following the date on which the district representatives within the groundwater management area adopted desired future conditions.

(c) [(b)] The district representatives [districts] in a groundwater management area may, as part of the process for adopting and submitting desired future conditions, propose classification of a relevant aquifer or [portion of] portions of a relevant aquifer as non-relevant if the districts determine that aquifer characteristics, projected groundwater demands, and current groundwater uses do not warrant adoption of a desired future condition. Non-relevant aquifers do not require a desired future condition. [In such a case no desired future condition is required.] The districts must submit the following documentation for non-relevant aquifers to the agency as part of the desired future condition package [related to the portion of the relevant aquifer proposed to be classified as non-relevant]:

(1) A description, location, and/or map of the aquifer or portion of the aquifer;

(2) A summary of aquifer characteristics, projected groundwater demands, and current groundwater uses, including the total estimated recoverable storage as provided by the executive administrator, that support the conclusion that desired future conditions in adjacent or hydraulically connected relevant aquifer(s) will not be affected; and

(3) An explanation of why the aquifer or portion of the aquifer is non-relevant for joint planning purposes.

§356.32. *Desired Future Condition [Submission] Package.*

A designated representative of the groundwater management area [Districts] must provide the following to the executive administrator no later than 60 days following the date on which the district representatives [districts] in the groundwater management area [collectively] adopted the desired future condition(s):

(1) a copy of the desired future conditions explanatory report addressing the information required by Texas Water Code §36.108(d-3) and the criteria in Texas Water Code §36.108(d);

(2) non-relevant aquifer documentation required by §356.31(c) of this subchapter (relating to Desired Future Condition Package Submission Date);

(3) [(2)] a copy of the resolution of the groundwater management area adopting the desired future conditions as required by Texas Water Code §36.108(d-3);

(4) [(3)] a copy of the notice that was posted for the joint planning meeting at which the districts collectively adopted the desired future condition(s) as required by Texas Water Code §36.108(e) and §36.108(e-2);

(5) [(4)] the name of a designated representative of the groundwater management area;

(6) [(5)] any groundwater availability model files or aquifer assessments acceptable to the executive administrator used in developing the adopted desired future condition with documentation sufficient to replicate the work; and

(7) [(6)] any other information the executive administrator may require to be able to estimate the modeled available groundwater.

§356.33. Determination of Administrative Completeness.

A submitted package will be considered administratively complete if it contains complete copies of all documents required under §356.32 of this subchapter (relating to Desired Future Condition [Submission] Package) and is signed and dated by the designated representative of the groundwater management area.

(1) The executive administrator will acknowledge in writing receipt of submitted packages and will review for administrative completeness. The agency may request clarifications while reviewing the package for administrative completeness. If the submitted package is administratively complete, the executive administrator will notify the district representatives within the groundwater management area in writing. If requests for clarification are not acknowledged or addressed in a reasonable amount of time, the executive administrator will [advise whether they are administratively complete or will] provide a notice of deficiencies.

(2) The designated representative of the groundwater management area [Districts] must submit to the executive administrator an updated package that contains corrections to the deficiencies noted in paragraph (1) of this section no later than 90 days following the date on which the executive administrator provided a notice of deficiencies.

§356.34. District Adoption of the Desired Future Condition.

Each district must [shall] adopt the desired future condition for the aquifer(s) within its boundaries as soon as possible after the executive administrator advises that the desired future condition package submitted pursuant to §356.32 of this subchapter (relating to Desired Future Condition [Submission] Package) is administratively complete.

§356.35. Modeled Available Groundwater.

The executive administrator will provide the modeled available groundwater value for each relevant aquifer with a desired future condition to districts in a groundwater management area and the

appropriate regional water planning groups no later than 180 days after the executive administrator has provided notice that the submitted desired future condition package is administratively complete as described in §356.33 of this subchapter (relating to Determination of Administrative Completeness).

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

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Ashley Harden

General Counsel

Texas Water Development Board

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SUBCHAPTER E. GROUNDWATER MANAGEMENT PLAN APPROVAL

31 TAC §§356.51 - 356.57

The amendments are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.51. Required Management Plan.

In accordance with Texas Water Code §§36.1071 (including coordination with surface water management entities on a regional basis), 36.1072, and 36.1085, a district must [shall] develop and submit to the executive administrator a management plan that meets the requirements of §356.52 of this subchapter (relating to Required Content of Management Plan). [The management plan goals must be time-based and quantifiable.]

§356.52. Required Content of Management Plan.

(a) A management plan must [shall] contain, unless explained in detail as not applicable, the following elements:

(1) Management goals:

- (A) providing the most efficient use of groundwater;
- (B) controlling and preventing waste of groundwater;
- (C) controlling and preventing subsidence;
- (D) addressing conjunctive surface water management issues;
- (E) addressing natural resource issues which impact the use and availability of groundwater, and which are impacted by the use of groundwater;
- (F) addressing drought conditions;
- (G) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement and brush control, where appropriate and cost-effective; and

(H) addressing the desired future conditions adopted by the district under [established pursuant to] Texas Water Code §36.108;

(2) Management objective(s) for each management goal. Management objectives are specific, measurable, and time-based statements of future outcomes that the district will use to achieve each [the] management goal [goals] in paragraph (1) of this subsection. [Management objectives are specific and time-based statements of future outcomes, each linked to a management goal.] Each future outcome must be the result of actions that can be taken by the district during the five years following the effective date of the adopted management plan;

(3) Performance standard(s) for each management objective. Performance standards are indicators or measures used to evaluate the effectiveness and efficiency of district activities. Evaluation of the effectiveness of district activities measures the performance of the district. Evaluation of the efficiency of district activities measures how well district resources are used to produce an output, such as the amount of resources devoted for each management action;

(4) Details of how the district will manage groundwater supplies in the district, including a methodology by which the district will track its progress in achieving its management goals. At least one goal must be tracked on an annual basis; however, other goals may be defined and tracked over a longer time period as appropriate; ~~and~~

(5) The actions, procedures, performance, and avoidance that are or may be necessary by the district to effect the plan, including specifications and proposed rules;

(6) ~~[(5)]~~ Estimates of the following:

(A) modeled available groundwater in the district as provided by the executive administrator based on the desired future condition established under Texas Water Code §36.108;

(B) the amount of groundwater being used within the district on an annual basis taken from either the water use survey data provided by the executive administrator or the district's own estimate;

(C) the annual amount of recharge from precipitation, if any, to each aquifer [the groundwater resources] within the district, as provided by the executive administrator;

(D) ~~[for each aquifer,]~~ the annual volume of water that discharges from each [the] aquifer within the district to springs and any surface water bodies, including lakes, streams, and rivers,₂ as provided by the executive administrator;

(E) the annual volume of flow into and out of the district within each aquifer and between aquifers in the district, as provided by [if a groundwater availability model is available from] the executive administrator;

(F) the projected surface water supply in the district according to the most recently adopted state water plan; and

(G) the projected water demand for water in the district according to the most recently adopted state water plan; ~~and[-]~~

(7) Details of the district's consideration of:

(A) Water supply needs within the district according to the most recently adopted state water plan, emphasizing those needs that impact groundwater supply within the district; and

(B) Water management strategies sourced from within the district boundaries according to the most recently adopted state water plan, emphasizing strategies that are or will be impacted by district actions.

(b) The management goals, management objectives, and performance standards [and management objectives] required in subsection (a)(1), (2), and (3) of this section must be consistent with the established desired future conditions of the district's groundwater management area(s).

(c) Estimates required in subsection (a)(5) of this section must be developed with [Each district must use the] groundwater availability modeling information provided by the executive administrator in conjunction with the district's best available site-specific information and data. [provided by the district when developing the estimates required in subsection (a)(5) of this section.]

§356.53. *Plan Submission.*

(a) A district requesting approval of its management plan, or of an amended ~~[update of its]~~ management plan to incorporate adopted desired future conditions, or any other updates as necessary, will ~~[that apply to the district, shall]~~ submit to the executive administrator the following:

~~[(1)]~~ one hard copy of the adopted management plan;

(1) ~~[(2)]~~ one electronic copy of the adopted management plan; and

(2) ~~[(3)]~~ documentation that the plan was adopted after notice posted in accordance with Texas Government Code Chapter 551, including a copy of the posted agenda, meeting minutes, and copies of the notice either posted on the district's website or provided to the county clerk. [printed in the newspaper or publisher's affidavit.]

(b) The plan or revised plan under §356.54 of this subchapter (relating to Approval) will ~~[shall]~~ be considered properly submitted to the executive administrator when all of the items specified in subsection (a) of this section are received by the executive administrator.

§356.54. *Approval.*

(a) The executive administrator will approve a plan as administratively complete when it contains the information required by Texas Water Code §36.1071(a) and (e). The executive administrator will notify the district in writing of the determination.

(b) If approval is denied, the executive administrator will provide written reasons for the denial with the notice of denial. A district has 180 days from receipt of notice to submit a revised management plan for review and approval. A revised ~~[or amended]~~ management plan must comply with all requirements of this subchapter.

(c) An approved management plan remains in effect until:

(1) the district fails to readopt a management plan at least 90 days before the plan expires;

(2) the district fails to submit the district's readopted management plan to the executive administrator at least 60 days before the plan expires; or

(3) the executive administrator determines that the readopted management plan does not meet the requirements for approval and the district has exhausted all appeals to the board or court in accordance with Texas Water Code §36.1072(f).

§356.55. *Appeal of Denial of Management Plan Approval.*

(a) If the executive administrator denies approval of a management plan, a revised management plan, or an amendment to a management plan, the district may appeal the denial by notifying the executive administrator in writing of its intent to appeal, not later than 60 days after the executive administrator's written notice of denial.

(1) Not later than 30 days after filing its notice of intent to appeal, a district will ~~[shall]~~ submit to the executive administrator in

writing points of appeal addressing each of the executive administrator's reasons for denial of approval.

(2) The appeal must [sh~~all~~] be heard at the first regularly scheduled meeting of the board to occur after the expiration of 30 days from the receipt of the district's written points of appeal. Written notice of appeal and written points of appeal will [sh~~all~~] be considered to be received by the executive administrator when received in the Austin offices of the agency.

(3) The executive administrator may file a written response to the district's points of appeal with the board and must [sh~~all~~] provide a copy of the response to the district.

(b) If the board upholds the executive administrator's decision to deny approval of the management plan, the district may request that the matter be mediated or, failing mediation, may appeal to a district court in Travis County, in accordance with Texas Water Code §36.1072(f).

§356.56. *Approval of Management Plan Amendments.*

(a) Amendments to a plan that substantially affect the management plan require approval by the executive administrator and must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Substantial amendments include updating estimates of modeled available groundwater, revising the desired future conditions goal, or any changes to elements required by Texas Water Code §36.1071. A plan must be updated no later than two years after the adoption of desired future conditions by the district representatives within the groundwater management area(s).

(b) [(a)] If the district proposes to amend its plan for revisions of items not required by Texas Water Code §36.1071 or that do not substantially affect the plan [other than the modeled available groundwater or desired future condition], the district must [sh~~all~~] submit a written copy of the proposed amendment to the executive administrator so that the executive administrator may determine whether the amendment requires approval.

(c) [(b)] If the executive administrator determines that a proposed [the] amendment substantially affects the plan and requires approval, the district must [sh~~all~~] submit all amendments to the management plan developed under §356.52 of this subchapter (relating to Required Content of Management Plan) to the executive administrator within 60 days of adoption of the amendment by the district's board. [Amendments shall be submitted either in the form of an addendum to the management plan or as changes highlighted within the entire management plan.]

(d) All management plan amendments or proposed amendments must be submitted in writing to the executive administrator and include a cover letter noting the amendments made or proposed amendments to the plan.

[(c)] If the amendments address items required by Texas Water Code §36.1071, they should be in the form of an amended plan instead of an addendum to avoid confusion and preserve the integrity of the plan. Amendments must be submitted in accordance with §356.53 of this subchapter (relating to Plan Submission). Incorporation of newly developed desired future conditions and modeled available groundwater values must be adopted as an amendment.]

§356.57. *Sharing with Regional Water Planning Groups.*

Each district must [sh~~all~~] forward a copy of its approved management plan to the chair of each regional water planning group within the district's boundaries.

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

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-2776



SUBCHAPTER G. BRACKISH GROUNDWATER PRODUCTION ZONES

31 TAC §§356.70 - 356.72

The amendments are proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

This rulemaking affects Water Code, §15.001 §16.0012, §16.060, §35.004, §36.001, §36.1015, §36.1071, §36.1072, §36.1073, §36.108, §36.1084, §36.1085, and §36.3011.

§356.70. *Brackish Groundwater Production Zone Designation.*

(a) The agency will identify and designate local or regional brackish groundwater production zones in areas of the state with moderate to high availability and productivity of brackish groundwater that can be used to reduce the use of fresh groundwater and that:

(1) are separated by hydrogeologic barriers sufficient to prevent significant impacts to water availability or water quality in any area of the same or other aquifers, subdivisions of aquifers, or geologic strata that have an average total dissolved solids level of 1,000 milligrams per liter or less at the time of designation of the zones; and

(2) are not located in:

(A) an area of the Edwards Aquifer subject to the jurisdiction of the Edwards Aquifer Authority;

(B) the boundaries of the:

(i) Barton Springs-Edwards Aquifer Conservation District;

(ii) Harris-Galveston Subsidence District; or

(iii) Fort Bend Subsidence District;

(C) an aquifer, subdivision of an aquifer, or geologic stratum that:

(i) has an average total dissolved solids level of more than 1,000 milligrams per liter; and

(ii) is serving as a significant source of water supply for municipal, domestic, or agricultural purposes at the time of designation of the zones; or

(D) an area of a geologic stratum that is designated or used for wastewater injection through the use of injection wells or disposal wells permitted under Texas Water Code Chapter 27.

(b) In designating a brackish groundwater production zone under this section, the agency will ~~[shall]~~:

(1) determine the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period without causing a significant impact to water availability or water quality as described by subsection (a)(1) of this section; ~~[and]~~

(2) include in the designation description:

(A) the amounts of brackish groundwater that the zone is capable of producing during the periods described by paragraph (1) of this subsection; and

(B) recommendations regarding reasonable monitoring to observe the effects of brackish groundwater production within the zone; and

(3) work with ~~[groundwater conservation]~~ districts and stakeholders and consider the most recently updated Brackish Groundwater Manual for Texas Regional Water Planning Groups~~;~~ ~~and any updates to the manual,~~ and other relevant scientific data or findings.

(c) Areas of the state that are not designated as brackish groundwater production zones are not precluded from development of brackish groundwater or from future designation of zones.

(d) The agency may amend a designated brackish groundwater production zone upon its own initiative or upon request by a district. A request for an amendment from a district must be made in writing and include justification and documentation supporting the requested amendment.

(e) The Agency will provide notice of the intent to amend a designated brackish groundwater production zone with proposed changes to any district within the applicable brackish groundwater production zone and to the district(s) and any entity that requested the amendment through a district.

~~[(d) The Agency may amend a designated brackish groundwater production zone upon its own initiative or upon request by a groundwater conservation district and will publish guidance discussing the timing for considering amendments. The Agency will provide notice of intent to amend brackish groundwater production zone with proposed changes to any groundwater conservation district within the applicable brackish groundwater production zone and to any entity that requested the amendment. A request from a groundwater conservation district must be in form and substance acceptable to the Executive Administrator and include a justification and documentation supporting the requested amendment.]~~

§356.71. Brackish Groundwater Production Zone Operating Permit Review.

(a) This section does not apply to a district that overlies the Dockum Aquifer and includes wholly or partly 10 or more counties.

(b) When a district submits an application for a brackish groundwater production zone operating permit to the agency, the agency will conduct a technical review of the application, subject to subsections (c) and (d) of this section.

(c) Upon receipt of such an application, the agency will assess the application to determine whether a proposed production well is located within a designated brackish groundwater production zone. If a proposed production well is not located within a designated brackish groundwater production zone, the agency will not conduct the technical review of the application. If a proposed production well is located within a designated brackish groundwater production zone, the agency will conduct the technical review of the applicable permit application

or applicable portions of a permit application in accordance with subsections (d) - (f) of this section.

(d) Upon receipt of an application for a brackish groundwater production zone operating permit for a proposed production well located within a designated brackish groundwater production zone and that includes all of the information required by Texas Water Code §36.1015(g), the agency will conduct a technical review of the application. If the agency does not receive all of the information required by Texas Water Code §36.1015(g), the agency will notify the district of the missing information. The agency will not conduct a technical review of an incomplete application until all required information is received.

(e) After conducting the application assessment and required technical review of a complete application, the agency will ~~[shall]~~ provide a report of the technical review of the application to the district that submitted the application that includes:

(1) findings regarding the compatibility of the proposed well field design with the designated brackish groundwater production zone, including:

(A) whether the proposed production exceeds the amount of brackish groundwater that the zone is capable of producing over a 30-year period and a 50-year period, as determined pursuant to Texas Water Code §16.060(e) and ~~[is]~~ in addition to the amount of modeled available groundwater provided under Texas Water Code §36.108; and

(B) whether the parameters and assumptions used in the model described in Texas Water Code §36.1015(g)(4)(A) are compatible with the designated brackish groundwater production zone;

(2) recommendations for the monitoring system required by Texas Water Code §36.1015(e)(4) and (6), including whether the number of monitoring wells are adequate and in appropriate locations and aquifers, in accordance with recommendations established under Texas Water Code §16.060(e)(2)(B);

(3) verification the district rules require ~~[required]~~ monitoring of land elevations for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, as required by Texas Water Code §36.1015(e)(5).

(f) The findings and recommendations included in subsection (e) of this section ~~[subsection]~~ will only be site-specific if the agency has received site-specific data and information from the district.

§356.72. Annual Report Review.

(a) When a district has received an annual report required under Texas Water Code §36.1015(e)(6) and reviewed the report for any missing information, the district will submit the report to the agency and request a review, under ~~[If a district makes a request under]~~ Texas Water Code §36.1015(j). ~~The;~~ ~~the~~ agency will investigate and issue a technical report to the district that sent the request, subject to subsection (b) of this section ~~[subsection]~~.

(b) Upon receipt of a request, the agency will determine whether it has received the applicable annual report and all of the information required under Texas Water Code §36.1015(e)(6), and for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, the information required to be collected under Texas Water Code §36.1015(e)(5) related to subsidence. If the agency has not received all of the information required under Texas Water Code §36.1015(e)(6) or §36.1016(e)(5), as applicable, the agency will notify the district of the missing information and will not conduct a technical review of the reports until all required information is received.

(c) Not later than the 120th day after the date the agency receives all of the required information, the agency will investigate and issue a technical report on whether:

(1) brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report [~~from the designated brackish groundwater production zone~~] is projected to cause:

(A) significant aquifer level declines in the same or an adjacent aquifer, subdivision of an aquifer, or geologic stratum that were not anticipated by the agency in the designation of the zone;

(B) negative effects on quality of water in an aquifer, subdivision of an aquifer, or geologic stratum; or

(C) for a project located in a designated brackish groundwater production zone in the Gulf Coast Aquifer, subsidence during the permit term; or

(2) [~~whether not~~] enough information is available to determine if [~~whether~~] brackish groundwater production from the designated brackish groundwater production zone under the project that is the subject of the report [~~from the designated brackish groundwater production zone~~] is projected to cause the conditions listed in paragraph (1) of this subsection [(e)(1) of this section].

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 July 24, 2024.

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-2776



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) proposes the repeal of 40 Texas Administrative Code Chapter 607 relating to the Minimum Educational Training program for public retirement system trustees and administrators. The purpose of the proposed repeal is to eliminate the existing rule and adopt a new rule under separate action.

This repeal is proposed under Sections 801.201(a) and 801.211(e), which grant the Board authority to adopt rules for the conduct of its business and specifically the Minimum Educational Training program, respectively.

FISCAL NOTE

Ashley Rendon, Deputy Director, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed repeal. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed repeal will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed repeal. There is no effect on local economy for the first five years that the proposed repeal is in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The board has determined that the proposed repeal does not require an environmental impact analysis because the repeal is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed repeal does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Ms. Rendon has determined that for each year of the first five years the proposed repeal will be in effect, the public benefit anticipated would be to eliminate an outdated rule while adopting a new, updated rule under separate action.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 40 T.A.C. Chapter 607. For each year of the first five years the proposed rules are in effect, Ms. Rendon has determined:

(1) The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous rule proposal making changes to the existing Minimum Educational Training program.

(2) The proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal will repeal existing rules, but is associated with a simultaneous rule proposal making changes to the existing Minimum Educational Training program.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed repeal will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed repeal may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that this proposal are published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.101. *Authority.*

§607.103. *Purpose.*

§607.104. *Definitions.*

§607.105. *Applicability.*

§607.107. *Exemption for Certain System Administrators.*

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 July 26, 2024.

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §§607.110, §607.113

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.110. *Minimum Educational Training Requirements.*

§607.113. *Minimum Educational Training Requirements for Reappointed and Re-elected Trustees and Rehired System Administrators.*

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 July 26, 2024.

TRD-202403507

Tamara Aronstein

General Counsel

State Pension Review Board

Earliest possible date of adoption: September 8, 2024

For further information, please call: (512) 463-1736



SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.120. *Program Standards for All Sponsors.*

§607.122. *MET Credit Hour Computation for Sponsors.*

§607.124. *Sponsor Accreditation.*

§607.126. *Obligations of Accredited Sponsors.*

§607.128. *Accreditation of MET Activities from Non-Accredited Sponsors.*

§607.130. *Accreditation of In-House Training Activities.*

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 July 26, 2024.

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §§607.140, §607.142

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

The proposed repeal affects 40 T.A.C. Chapter 607.

§607.140. *PRS Reporting.*

§607.142. *PRS Records.*

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 July 26, 2024.

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



CHAPTER 607. PUBLIC RETIREMENT SYSTEM MINIMUM EDUCATIONAL TRAINING PROGRAM

The Texas Pension Review Board (Board) proposes new 40 Texas Administrative Code Chapter 607 relating to the Minimum Educational Training program for public retirement system trustees and administrators.

The purpose of the proposed rules is to increase clarity of the rules, streamline training cycles to improve compliance with the training requirements, increase the efficiency of program tracking and reporting, and strengthen agency oversight for accredited training activities.

BACKGROUND AND PURPOSE

In 2013, the legislature passed House Bill 13, requiring the Board to establish a program to provide educational training to public retirement system trustees and administrators. Section 801.211(e), Texas Government Code authorizes the Board to adopt rules to implement this requirement. The Board initially adopted 40 TAC Chapter 607 in 2014. The Board now proposes new rules to clarify and improve the Minimum Educational Training program, together with the proposed repeal of the rules under separate action.

SUMMARY

The proposed rules in 40 TAC §607.101 provide the authority to adopt these rules.

The proposed rules in 40 TAC §607.103 provide the purpose of the rules, to ensure that trustees and administrators of Texas public retirement systems have the pension education needed to successfully discharge their duties.

The proposed rules in 40 TAC §607.104 provide definitions pertinent to the rules for the Minimum Educational Training program.

The proposed rules in 40 TAC §607.105 provide the applicability of the rules, which apply to trustees, except in certain cases, statutorily authorized designees, and administrators of public retirement systems.

The proposed rules in 40 TAC §607.110 provide the Minimum Educational Training program requirements for trustees and administrators in their first year of service and each calendar year thereafter. Trustees and administrators must complete seven credit hours of core training in the first year of service and two credit hours of training for continuing education each calendar year thereafter. The proposed rules create a one-time extension application process for the first year of service training requirement. The proposed rules specify that continuing education

hours completed in excess of the annual requirement may not be carried over to a subsequent calendar year. The proposed rules provide for the transition from current requirements, proposed for repeal under separate action, to the new requirements effective January 1, 2025.

The proposed rules in 40 TAC §607.113 specify that trustees and administrators reappointed to, re-elected to, or rehired by a public retirement system are not required to repeat the first year of service training requirement unless more than five years have passed since the last date of the most recent term of service or employment.

The proposed rules in 40 TAC §607.120 provide program standards for training providers offering Minimum Educational Training activities, such as compliance with program requirements and the Board's curriculum guide, method of delivery for training activities, and verification of attendance for online training.

The proposed rules in 40 TAC §607.122 detail the computation of credit hours by training providers. Credit hours are based on net actual instruction time for all activities, with additional parameters provided for both digital and in-person activities.

The proposed rules in 40 TAC §607.124 provide for the accreditation of training providers by the Board. Training providers must conform with Board standards outlined in rule, conduct its business lawfully, and follow the application process provided in rule. This rule also creates a process for complaints regarding training providers and the Board's authority if a training provider is noncompliant with training program standards or Board rules.

The proposed rules in 40 TAC §607.126 create several requirements for accredited training providers, including recordkeeping, allowing review by the Board, and providing participants a certificate of completion.

The proposed rules in 40 TAC §607.128 allow for accreditation of training activities by a non-accredited training provider through a case-by-case application process outlined in the rule. Such activities, once approved, may be offered through repeat presentations for 36 months without requiring a new application.

The proposed rules in 40 TAC §607.130 provide details on accreditation of in-house training activities offered by a public retirement system for its own trustees and/or administrators. In-house training must meet all standards for training providers included in Chapter 607, except that in-house training is exempted from certain requirements listed in the rule.

The proposed rules in 40 TAC §607.140 pertain to Minimum Educational Training program reporting requirements, creating an annual April 1 deadline for two reports to be submitted by public retirement systems to provide the Board information on trustees and administrators and the training they completed during the preceding calendar year. This section also includes a requirement for the Board to report annually on the noncompliance status of trustees and administrators, as reported to the Board pursuant to this section.

The proposed rules in 40 TAC §607.142 create recordkeeping requirements for public retirement systems, which must retain records detailed in the rule for five years from the date a training activity is completed, and provide a copy of these records to the Board upon request.

FISCAL NOTE

The Board's deputy director, Ashley Rendon has determined that for each year of the first five-year period the proposed rules are

in effect there will be no fiscal implications for state or local government.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no effect on local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The Board has determined that the proposed rules do not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Ms. Rendon has determined that for each year of the first five years the proposed rules will be in effect the public benefit is to improve efficiency of and compliance with the Minimum Educational Training program, ensuring public retirement system trustees and administrators have the pension knowledge needed to successfully discharge their duties.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed rules. For each year of the first five years the proposed rules are in effect, Ms. Rendon has determined:

- (1) The proposed rules do not create or eliminate a government program, but instead relate to the readoption of the rules to make changes to an existing 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 Board.
- (4) The proposed rules do not require a decrease or increase in fees paid to the Board.
- (5) The proposed rules do not create a new regulation, because these rules replace a rule being repealed simultaneously to provide for revisions.

(6) The proposed rules will not expand or repeal existing rules.

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

(8) The proposed rules do not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.002(5), so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed rules may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§607.101, 607.103 - 607.105, 607.107

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.101. Authority.

This chapter is promulgated under the authority of Texas Government Code, §801.201, relating to rulemaking, and §801.211, relating to a public retirement system educational training program.

§607.103. Purpose.

(a) The Public Retirement System Educational Training Program, as mandated by §801.211 of the Texas Government Code, is intended to ensure that every trustee and system administrator of a public retirement system in Texas pursues the necessary education relating to public pension matters throughout his or her tenure to successfully discharge their duties.

(b) This chapter will establish Minimum Educational Training requirements for Trustees and Administrators to help ensure that these trustees and administrators participate in training activities that maintain and improve their core competencies, and keep them abreast of recent developments in public pension matters and issues impacting their respective duties.

(c) This chapter is not intended to dictate that trustees and system administrators pursue only the Minimum Educational Training, but to set a minimum standard for training/education. Trustees and system administrators are encouraged to pursue additional educational opportunities in public pension-related areas.

§607.104. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

(1) "Board" means the State Pension Review Board.

(2) "Credit hour" means the actual amount of instruction time for an MET activity expressed in terms of hours. The number of

MET credit hours shall be based on sixty (60) minutes of instruction per hour.

(3) "First year of service" means:

(A) On or before December 31, 2024, the twelve-month period beginning from the date of assuming one's position on the PRS board or date of hire for an administrator.

(B) On or after January 1, 2025, the calendar year in which an individual assumes one's position on the PRS board or is hired to serve as administrator if that date occurs before September 1 of that calendar year. For individuals who assume a position on the PRS board or are hired to serve as administrator on or after September 1 of a calendar year, the first year of service refers to the next calendar year.

(4) "Minimum Educational Training" shall have the same meaning as assigned by §607.110 of this chapter.

(5) "MET" means Minimum Educational Training.

(6) "MET activity" means any organized in-person or on-line pension-related educational activity, which may include, but is not limited to, organized seminars, courses, conferences, lectures, panel discussions, audio, teleconference, video, and digital media presentations, question-and-answer periods, and in-house education.

(7) "Net actual instruction time" means time spent on instruction, not including any breaks, or other non-educational activities including promotion of particular products or services as prescribed by §607.120(a)(3) of this chapter (relating to Program Standards for All Training Providers).

(8) "Public retirement system" shall have the same meaning as assigned by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) and retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

(9) "PRS" means public retirement system.

(10) "PRS board" has the same meaning as "governing body of a public retirement system," as provided in Texas Government Code §802.001(2).

(11) "Statutorily authorized designee" means an individual other than the trustee, designated by the trustee as authorized under the governing statute of the PRS or any other statute.

(12) "System administrator" means as defined by Texas Government Code §801.001(3) and §802.001(4).

(13) "Training provider" means an individual or organization offering training programs to trustees and system administrators. The training provider may or may not have developed the program materials. However, the training provider is responsible for ensuring the program materials present the necessary learning objectives and for maintaining the documentation required by this chapter.

(14) "Trustee" means as provided in Texas Government Code §801.001(4).

§607.105. Applicability.

This chapter is promulgated to establish the MET requirements for the following.

(1) Trustees, as defined in Texas Government Code, §801.001(4), in their capacity as members of the governing body of a PRS, as that term is defined in Texas Government Code §802.001(2). However, this chapter does not apply to:

(A) members of a PRS' sponsoring entity board that is only responsible for the creation, termination and amendment of the PRS; and

(B) members of a committee appointed by a PRS' sponsoring entity board to act in an advisory or oversight capacity only by providing guidance or recommendations.

(2) Statutorily authorized designees serving as members of the governing body of a PRS.

(3) System administrators, as defined by Texas Government Code, §801.001(3) and §802.001(4).

§607.107. Exemption for Certain System Administrators.

(a) For the purposes of this section, an "outside entity" is a bank or financial institution.

(b) The Board may grant an exemption to a PRS for certain types of system administrators from the MET requirements on a case-by-case basis if:

(1) the PRS designates an outside entity as the system administrator, and the PRS board of trustees or its designee completes and forwards to the Board a request for exemption on a form provided by the Board indicating the same; or

(2) the PRS does not have a system administrator that meets the statutory definition as contained in the Texas Government Code, §801.001(3) and §802.001(4) and the PRS board or its designee completes and forwards to the Board a request for exemption, on a form provided by the Board, certifying that the PRS does not have a system administrator. The request shall include a statement affirming that one or more trustees of the PRS are responsible for the duties of the system administrator and are already subject to the MET requirements.

(c) If the Board granted an exemption to a PRS under subsection (a) of this section and the exemption is no longer applicable, the PRS shall report the same to the Board, and the exemption shall be revoked.

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 July 26, 2024.

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



SUBCHAPTER B. MINIMUM EDUCATIONAL TRAINING REQUIREMENTS FOR TRUSTEES AND SYSTEM ADMINISTRATORS

40 TAC §607.110, §607.113

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.110. Minimum Educational Training Requirements.

(a) First year of service. A new trustee and a new system administrator shall complete at least seven (7) credit hours of training in the core content areas within the first year of service. The seven credit hours shall include training in all of the core content areas. A trustee or system administrator must earn no less than half a credit hour in each content area. No more than two credit hours earned in any one core content area shall be applied toward meeting the 7-hour minimum requirement contained in this subsection. The core content areas are:

- (1) fiduciary matters;
- (2) governance;
- (3) ethics;
- (4) investments;
- (5) actuarial matters;
- (6) benefits administration; and
- (7) risk management.

(b) A new trustee or system administrator may submit to the Board an application for a one-time extension period of three months to complete the first year of service core training requirement, which the Board may approve in exceptional circumstances. The request for extension must be approved by the chair of the PRS' board, or, for an extension request by the PRS board chair, approved by the vice chair of the PRS' board or its administrator. The application must be submitted to the Board on a form prescribed by the Board and must include an explanation of the circumstances necessitating the extension.

(c) Subsequent years of service. A trustee and a system administrator shall complete at least two (2) credit hours of continuing education in either the core content areas in subsection (a) of this section, continuing education content areas, or any combination thereof, within each calendar year after the first year of service as a new trustee or new system administrator. The continuing education content areas include:

- (1) compliance;
- (2) legal and regulatory matters;
- (3) pension accounting;
- (4) custodial issues;
- (5) plan administration;
- (6) Texas Open Meetings Act; and
- (7) Texas Public Information Act.

(d) A trustee or administrator may not carry over continuing education credit hours earned in excess of the requirement under subsection (c) of this section to a subsequent calendar year.

(e) MET completed up to six months before the trustee's date of assuming position on the PRS board or system administrator's hiring date may be counted for the first-year-of-service requirement in subsection (a) of this section.

(f) A trustee serving concurrently on multiple PRS boards and a system administrator employed concurrently by multiple PRSs shall only be required to complete the MET requirements in this section for service with one PRS, so long as the concurrent service or employment is reported to the Board pursuant to §607.140(b)(3) of this chapter.

(g) Credit hours for attending MET activities shall be based on net actual instruction time. Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time

of the recordings, and credit hours for attending in-person educational programs shall be based on actual instruction time.

(h) A trustee or administrator may gain credit for teaching an accredited MET activity. Credit hours shall be based on net actual presentation time, but may not include repeated presentations of the same activity in a single calendar year.

(i) The Board hereby adopts by reference the Curriculum Guide for Minimum Educational Training to provide further direction on core and continuing education content areas as contained in subsections (a) and (c)(1) of this section. Trustees and system administrators are encouraged to review the Curriculum Guide for content area guidance.

(j) The Board shall make the Curriculum Guide for Minimum Educational Training available to the PRSs. A PRS can obtain the most current version of the Curriculum Guide for Minimum Educational Training from the offices of the State Pension Review Board and from its website at <http://www.prb.texas.gov>.

(k) The 2025 calendar year training cycle for trustees and administrators shall be based on their MET compliance status on December 31, 2024, as detailed below. This subsection expires on December 31, 2025.

(1) Trustees and administrators within their first year of service on December 31, 2024 who have completed by that date the training required by subsection (a) of this section shall begin their first continuing education cycle in calendar year 2025.

(2) Trustees and administrators within their first year of service on December 31, 2024 who have not completed by that date the training required by subsection (a) of this section shall complete the first year of service training in calendar year 2025.

(3) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2024 may carry over any hours completed in that year to the calendar year 2025 continuing education cycle. If a trustee or administrator completed more than two continuing education hours, those hours will not carry over to calendar year 2026.

(4) Trustees and administrators who began a continuing education cycle, as required by subsection (c) of this section, in calendar year 2023 will begin a new continuing education cycle on January 1, 2025. Trustees and administrators who did not complete the training hours required in previous cycles will remain noncompliant and must complete all outstanding required credit hours.

§607.113. Minimum Educational Training Requirements for Reappointed and Re-elected Trustees and Rehired System Administrators.

(a) The following provisions shall apply to:

(1) A trustee who is reappointed or re-elected to a subsequent term of service for the same PRS or who leaves one PRS and is appointed as a trustee to another PRS;

(2) A trustee who serves on multiple PRS boards;

(3) A trustee who is subsequently hired by a PRS to serve as system administrator;

(4) A system administrator who is rehired to a subsequent term of employment by the same PRS or who leaves one PRS and is hired as system administrator by another PRS;

(5) A system administrator who is employed by multiple PRSs; and

(6) A system administrator who is subsequently appointed or elected to a PRS board.

(b) Unless more than five years have passed since the last date of the most recent term of service or employment, a person under subsection (a) of this section shall not be required to repeat the core training requirement already completed under §607.110(a) of this subchapter (relating to Minimum Educational Training Requirements) but shall complete the continuing education requirement in §607.110(c) of this subchapter within each calendar-year period served.

(c) If more than five years have passed since the last date of most recent term of service or employment, a person under subsection (a) of this section shall be subject to both the core training requirement within the first year of service as contained in §607.110(a) of this subchapter and the continuing education requirement within each calendar-year period after the first year of service as contained in §607.110(c) of this subchapter.

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

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State Pension Review Board

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SUBCHAPTER C. MINIMUM EDUCATIONAL TRAINING PROGRAM SPONSORS

40 TAC §§607.120, 607.122, 607.124, 607.126, 607.128, 607.130

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.120. Program Standards for All Training Providers.

(a) MET activities offered by training providers must comply with the following standards.

(1) An MET activity shall constitute an organized program of learning dealing with matters related to public pensions, including the MET's core or continuing education content areas in §607.110 of this chapter (relating to Minimum Educational Training Requirements). Training providers are required to review the Curriculum Guide as referenced in §607.110 of this chapter for content area guidance.

(2) An MET activity shall be conducted in a suitable facility by an individual or group qualified by professional or academic experience.

(3) An MET activity shall be educational in nature and shall not include the promotion of particular products or services.

(4) An MET activity shall be conducted in person, online via the internet, or by teleconference.

(5) An MET activity shall meet all of the other requirements contained in this chapter.

(b) An MET activity training provider shall determine, and inform participants, in advance of the course, of the course's learning or content objectives, any necessary prerequisites, the credit hours the course provides for each core and continuing education content area, and the total credit hours the course provides.

(c) An MET activity training provider is responsible for ensuring the participants register their attendance during the MET activity. Training providers are responsible for assigning the appropriate number of credit hours for participants, including reduced hours for those participants who arrive late or leave early.

(d) An MET activity training provider conducting online or other electronically-delivered courses including via pre-recorded audio or video shall verify participation by participants using one of the following methods:

(1) Provide a completion code to the participant upon successful completion of the course. The participant shall provide the completion code to the training provider to demonstrate attendance and completion. Without receiving such code, the training provider shall not issue a certificate of completion to the participant.

(2) Require participants to successfully complete a quiz on topics covered in the course.

(3) Use software-based student verification or attendance checks to verify participation.

(4) Use of another method to verify participation with approval from the Board.

(e) Staff meetings and other settings cannot be claimed for fulfilling the MET requirements if they do not meet the provisions of this chapter.

§607.122. MET Credit Hour Computation for Training Providers.

(a) Credit hours for attending MET activities shall be based on net actual instruction time. Training providers shall calculate the number of credit hours that should be given for an MET activity offered based on the net actual instruction time to be spent, and shall indicate the number on the MET activity materials. Fractional credit hours should be stated as decimals.

(b) Credit hours for viewing or listening to audio, video, or digital media shall be based on the running time of the recordings. For digital media activities that do not consist entirely of audio or video recordings, training providers shall reasonably estimate the time needed to complete the course.

(c) Credit hours for attending in-person educational programs shall be based on actual instruction time. Training providers shall adjust the credit hours for attendees who arrive late or leave early, as required by §607.120(c) of this chapter.

§607.124. Training Provider Accreditation.

(a) The Board may allow any training provider of MET to become Board accredited if the training provider, in the opinion of the Board, demonstrates that it will comply with its obligations to the Board and that its programs will conform to the Board's standards as outlined in:

(1) §607.120 of this chapter (relating to Program Standards for All Training Providers); and

(2) §607.122 of this chapter (relating to MET Credit Hour Computation for Training Providers).

(b) The Board will also require that each organization or individual applying to become a Board-accredited MET training provider agree that in the conduct of its business it will:

(1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;

(2) Not misrepresent facts or make false or misleading statements;

(3) Not make false statements to the Board or to the Board's agents; and

(4) Comply with the laws of the United States and the State of Texas.

(c) Each organization or individual applying to become a Board accredited MET training provider must submit an application on a form provided by the Board. The Board will consider for approval only applications that are complete. As part of the application process, the Board may require the training provider to submit information regarding its organization, purpose, history of providing educational training activities, course outlines, and such additional information that the Board may deem relevant.

(d) The Board shall review each application and notify the training provider of its acceptance or rejection. Approval of accredited training provider status will be based upon information received with the application, and such other information the Board shall deem relevant including, but not limited to, course offering and attendance history, approvals and denials of accreditation by other governmental entities, and complaints concerning past programs or the marketing thereof. An acceptance in any given year shall not bind the Board to accept a training provider in any future year.

(e) Upon accreditation a training provider can represent that it is a Board accredited MET training provider. An accredited training provider shall include in promotional materials the following language: "We are accredited by the State Pension Review Board as a Minimum Educational Training (MET) training provider for Texas public retirement systems. This accreditation does not constitute an endorsement by the Board as to the quality of our MET program."

(f) An accredited training provider is not required to comply with provisions contained in §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Training Providers).

(g) The Board may accredit a training provider to offer MET activities in the core content areas under §607.110(a) of this chapter (relating to Minimum Educational Training Requirements), the continuing education content areas under §607.110(c)(1) of this chapter, or both.

(h) An accredited training provider shall be reviewed for renewal of accredited training provider status after an initial two-year period of accreditation, and again after each subsequent four-year period of accreditation, or at such other times as the Board deems reasonable. To be considered for renewal, an accredited training provider must submit a renewal application on a form provided by the Board. Review for renewal shall be based on the criteria stated in subsection (d) of this section.

(i) Complaints concerning accredited training providers and MET activities may be directed to the Board. If the Board determines that a response is necessary from the training provider, the training provider shall be notified in writing and provided a copy of the complaint. The Board shall respond to all complaints within a reasonable time.

(j) The Board, in its sole and exclusive discretion, may determine that an accredited training provider is not in compliance with the registration requirements, MET standards, or applicable Board rules. The Board will provide the accredited training provider reasonable no-

tice of such a determination and shall provide the accredited training provider a reasonable opportunity to become compliant. If the Board determines the training provider is not in compliance, the Board may require the training provider to take corrective action and/or may terminate the training provider's accreditation. A training provider that has had its accreditation terminated or that has voluntarily surrendered its accreditation in lieu of corrective action may apply for reinstatement no sooner than six months after the effective date of the termination or surrender.

(k) A training provider that requests reinstatement may do so by submitting a completed application as required by subsection (c) of this section. The applicant will be subject to all the requirements of this section.

(l) Board decisions under this chapter are final and are not appealable. No portion of this chapter shall be interpreted or construed to create a right to a hearing, or to acknowledge or create any private right or interest.

§607.126. Obligations of Accredited Training Providers.

(a) In order to support the reports required of PRSs, a training provider accredited under §607.124 of this chapter (relating to Training Provider Accreditation) shall retain the following records for five years following the date the program is completed:

- (1) an agenda or outline that describes the course content;
- (2) the name and title of each instructor for each topic;
- (3) time devoted to each topic;
- (4) each date and location of the presentation;
- (5) record of participation that reflects:

(A) the credit hours earned by each trustee and system administrator participant; and

(B) the number of non-trustee and non-administrator attendees; and

(6) evaluations completed by trustee and system administrator participants pursuant to subsection (f) of this section.

(b) The accredited training provider, upon request of the Board, shall immediately submit any of the records retained in subsection (a) of this section for review.

(c) An accredited training provider shall at any reasonable time allow a member of the Board or Board staff, as part of a review of the training provider, to inspect the training provider's teaching facilities, examine the training provider's records, attend its courses or seminars at no charge, and review its program to determine compliance with the training provider accreditation requirements, MET standards, and all applicable Board rules.

(d) An accredited training provider shall not use advertising that is false or misleading, or use any communication that, in the training provider's effort to promote its services, is coercive.

(e) An accredited training provider, promptly upon the conclusion of the activity, but not later than 30 calendar days after the conclusion of the activity, shall provide to each trustee or system administrator participant a certificate of completion, reflecting the following information:

- (1) Name of participant;
- (2) Activity title;
- (3) Date and location of the activity;
- (4) Total accredited MET hours; and

(5) Training provider name and contact information.

(f) A training provider accredited to offer MET activities in the core content areas under §607.110(a) of this chapter (relating to Minimum Educational Training Requirements) shall promptly provide the information specified in subsection (e) of this section to the Board within 30 days of the conclusion of a core MET activity offered to satisfy the first year of service training requirement.

(g) An accredited training provider shall include in each MET activity a process for participants and instructors to evaluate the quality of the activity, including whether:

- (1) Course objectives were met;
- (2) Facilities and technology were satisfactory;
- (3) Each instructor was effective; and
- (4) Program content was timely and effective.

(h) Training providers shall inform instructors of the results of their performance evaluation in subsection (f) of this section, and should systematically review the evaluation process to ensure its effectiveness.

§607.128. Accreditation of MET Activities from Non-Accredited Training Providers.

(a) MET activities may be accredited, on a case-by-case basis, upon the written application of a training provider or PRS on behalf of its own trustees or system administrator. All applications for accreditation of an MET activity by a non-accredited training provider shall:

(1) be submitted at least 30 days in advance of the activity, although the Board, at its discretion, may approve applications filed less than 30 days in advance of the activity, or may approve applications filed after the activity;

(2) be submitted on a form provided by the Board;

(3) contain all information requested on the form;

(4) be accompanied by a sample agenda or course outline that describes the course content, designates the courses sought to be accredited as an MET activity, identifies the instructors, lists the time devoted to each topic, and shows each date and location at which the program will be offered; and

(5) include a detailed calculation of the total MET hours for the course and the hours that correspond to each core and continuing education topic the course covers.

(b) A separate application is required for each activity unless the activity is being repeated in exactly the same format but on different dates and/or locations. Repeat presentations may be added to an existing application for a 36-month period following the effective date of accreditation.

(c) The Board shall review each application and notify the applicant of acceptance or rejection of the activity. An acceptance in any given year shall not bind the Board to accept a training provider or activity in any future year.

§607.130. Accreditation of In-House Training Activities.

(a) MET activities provided by PRSs or their hired consultants primarily for the education of their trustees and/or system administrators are considered in-house training, and may be accredited for MET credit. Education provided in-house must meet the standards in §607.120 of this chapter (relating to Program Standards for All Training Providers) and §607.122 of this chapter (relating to MET Credit Hour Computation for Training Providers), except that in-house training is not required to comply with the following provisions:

(1) Section 607.120(c) of this chapter, regarding the requirement for ensuring participants register their attendance.

(2) Section 607.126(a)(5)(B) of this chapter, regarding the requirement to maintain a record of the non-trustee and non-administrator attendees.

(3) Section 607.126(e) of this chapter, regarding the requirement to provide participants a certificate of completion.

(4) Section 607.126(f) of this chapter, regarding the requirement to provide the Board participant information for accredited core activities satisfying the first year of service training requirement because this training will be reported as specified in §607.140 of this chapter.

(b) PRSs that conduct in-house training may apply to become accredited training providers under §607.124 of this chapter (relating to Training Provider Accreditation).

(c) PRSs that conduct in-house training may submit individual courses for accreditation under §607.128 of this chapter (relating to Accreditation of MET Activities from Non-Accredited Training Providers).

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

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



SUBCHAPTER D. COMPLIANCE WITH THE MINIMUM TRAINING REQUIREMENTS

40 TAC §607.140, §607.142

STATUTORY AUTHORITY

These rules are proposed under Government Code §801.211(e), which authorizes the Board to adopt rules necessary to implement the Minimum Educational Training program.

CROSS REFERENCE TO STATUTE

Section 801.211, Texas Government Code.

§607.140. PRS Reporting.

(a) By April 1 of each year, a PRS shall accurately report to the Board on behalf of its trustees and system administrator the MET credit hours completed during the preceding calendar year and any previous unreported training, as required by subchapter B. A PRS shall submit the report on a completed PRB-2000 form provided by the Board.

(b) By April 1 of each year, a PRS shall be responsible for providing the following information to the Board. A PRS shall also notify the Board of any changes in such information within 30 days after the date of the changes. A PRS shall submit this information on a completed PRB-150 form provided by the Board.

(1) For each trustee: the name, mailing address, phone number, e-mail, position (such as Chair, Vice-Chair, Secretary, etc.),

trustee type (such as Active, Retired, Citizen, etc.), term start date, the term length, and the term end date.

(2) For a system administrator: the name, title, phone number, e-mail, and date of hire.

(3) For each trustee serving concurrently on multiple PRS boards or system administrator employed concurrently by multiple PRSs, the name of the other PRSs.

(c) The Board shall report on the noncompliance status of trustees and administrators annually.

§607.142. PRS Records.

(a) For each trustee and system administrator, a PRS shall retain the following records for five years following the date an MET activity is completed:

(1) the training provider's name;

(2) the location of the MET activity;

(3) date(s) of completion; and

(4) the credit hours earned by the trustee or system administrator participant.

(b) The PRS, upon request of the Board, shall immediately submit a copy of any of the records retained in subsection (a) of this section for review.

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

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Tamara Aronstein

General Counsel

State Pension Review Board

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For further information, please call: (512) 463-1736



CHAPTER 609. PUBLIC RETIREMENT SYSTEM INVESTMENT EXPENSE REPORTING

The Texas Pension Review Board (Board) proposes amendments to 40 TAC §609.105 and §609.111, pertaining to public retirement system investment expense reporting, and the repeal of the existing rule at 40 TAC §609.109, regarding the initial investment expense reporting period. These proposed changes are referred to as "proposed rules." This rulemaking action was identified as part of the agency's four-year review of rules pursuant to Texas Government Code §2001.039.

BACKGROUND AND PURPOSE

In 2019, the legislature passed Senate Bill 322, enhancing investment expense reporting requirements for public retirement systems. Section 802.103(e), Texas Government Code authorizes the Board to adopt rules to implement this requirement. The Board initially adopted 40 TAC Chapter 609 in 2020. The Board now proposes rules to clarify the requirements.

The Board's investment analyst, Robert Munter, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Munter has determined that for each year of the first five years the proposed rules will be in effect the public benefit is to clarify the provisions in the current rule for ease of reference and understanding by the public and improve consistency and accuracy of investment expense reports to improve transparency for the public, members of the systems, and policymakers.

SUMMARY

The proposed rules in 40 TAC §609.105 pertain to definitions for investment expense reporting. The rule would be modified to specify that "direct and indirect fees and commissions" include "fees netted from returns," which is defined in the existing rule language. The amendments would also specify that "investment service" includes "in-house investment staff."

The proposed repeal of 40 TAC §609.109 pertains to the first investment expense reporting period, which has already passed. The rules expressly state that they expired on April 1, 2022. The proposed rules would repeal this entire obsolete section.

The proposed rules in 40 TAC §609.111 pertain to the investment expense reporting structure. The amendments would clarify that direct and indirect fees and commissions must be reported by type of fee and commission, and specifies the types as defined in 40 TAC §609.105(4), as the definition would be amended by this rulemaking. The amendments would also specify that investment expense information may be reported in an unaudited supplemental schedule within the public retirement system's annual financial report.

FISCAL NOTE

Mr. Munter has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the proposed rules. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rules will not have an adverse economic impact on small businesses, micro-businesses, or rural communities as defined in Texas Government Code §2006.001.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.

There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no effect on local economy for the first five years that the proposed rules are in effect; therefore, no local employment impact statement is required under Government Code, §2001.022 and 2001.024(a)(6).

ENVIRONMENTAL IMPACT STATEMENT

The board has determined that the proposed rules do not require an environmental impact analysis because the rule is not a major environmental rule under Government Code, §2001.0225.

COSTS TO REGULATED PERSONS

The proposed rules do not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE

Mr. Munter has determined that for each year of the first five years the proposed rules will be in effect the public benefit is consistency and clarity in the agency's investment expense reporting rules, resulting in enhanced transparency and data quality.

GOVERNMENT GROWTH IMPACT STATEMENT

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed rules, 40 TAC §§609.105, 609.109, and 609.111. For each year of the first five years the proposed rules are in effect, Mr. Munter has determined:

- (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 Board.
- (4) The proposed rules do not require a decrease or increase in fees paid to the Board.
- (5) The proposed rules do not create a new regulation.
- (6) The proposed rules will not expand or repeal existing rules.
- (7) The proposed rules do not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rules do not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.002(5), so a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

Comments on the proposed rules may be submitted to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498, or via email: rules@prb.texas.gov, no later than 30 days from the date that these proposed rules are published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

40 TAC §609.105, §609.111

STATUTORY AUTHORITY

These rules are proposed under Government Code §802.103(e), which authorizes the Board to adopt rules necessary to imple-

ment the Government Code §802.103(a)(3) investment expense reporting requirement.

CROSS REFERENCE TO STATUTE

Sections 802.103(a)(3), 802.103(e), Texas Government Code.

§609.105. Definitions.

The following words and terms, for the purposes of this chapter, shall have the following meanings, unless the rule indicates otherwise.

- (1) "Annual financial report" means as defined by §802.103 of the Texas Government Code.
- (2) "Asset class" means a group of securities that share similar characteristics, perform comparably in the marketplace, and are generally governed by the same laws and regulations.
- (3) "Board" means the State Pension Review Board.
- (4) "Direct and indirect fees and commissions" means amounts paid to investment managers for managing assets; commissions paid to brokers for trading securities on a per share basis; ~~and~~ profit share as defined by §815.3015(a)(2) of the Texas Government Code; and fees netted from returns.
- (5) "Fees netted from returns" means an amount that an investment manager collects or retains from earned investment returns rather than from the pension trust fund.
- (6) "Governing body of a public retirement system" means as provided by Texas Government Code §802.001(2).
- (7) "Investment expense" means direct and indirect fees and commissions and amounts retained or paid for investment services.
- (8) "Investment manager" means as defined by §802.204 of the Texas Government Code.
- (9) "Investment service" means a service provided to a public retirement system for general purposes of administering its investment program such as custodial, investment consulting, investment-related legal services, ~~and~~ research, and in-house investment staff.
- (10) "Public retirement system" means as defined by §801.001(2) and §802.001(3) of the Texas Government Code, but shall not include defined contribution plans as defined by Texas Government Code, §802.001(1-a) or retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by Texas Government Code, §802.002(d).

§609.111. Investment Expense Reporting Structure.

- (a) Public retirement systems shall~~[:]~~
 - ~~[(+)]~~ report direct and indirect fees and commissions:
 - (1) ~~[(A)]~~ in the fiscal year they are incurred;
 - (2) ~~[(B)]~~ by asset class;
 - (3) by type of fees and commissions, specifically:
 - (A) amounts paid to investment managers for managing assets;
 - (B) commissions paid directly by the public retirement system to brokers for trading securities on a per share basis;
 - (C) profit share as defined by §815.3015(a)(2) of the Texas Government Code; and
 - (D) fees netted from returns.
 - (4) ~~[(C)]~~ in a supplemental schedule, which may be unaudited, as part of the system's annual financial report.~~[: and]~~

[(2) identify amounts netted from returns separately from those paid from the trust.]

(b) Investment services provided to the system shall be reported in a supplemental schedule contained in the notes to the financial statements that are part of a public retirement system's annual financial report.

(c) A retirement system shall report expenses incurred for investment services by type of service provided, even if multiple investment services are provided by a single firm. Those expenses should not be reported by asset class.

(d) The asset classes are:

- (1) Cash;
- (2) Public Equity;
- (3) Fixed Income;
- (4) Real Assets;
- (5) Alternative/Other.

(e) The Board hereby adopts by reference the 2020 Asset Class Categorization Guide (2020 ACC Guide) to assist in categorizing items by asset class.

(f) The Asset Class Categorization Guide is available to all public retirement systems. A public retirement system may obtain the most current version of the Asset Class Categorization Guide from the offices of the State Pension Review Board and from its website at <http://www.prb.texas.gov>.

(g) For an investment product containing investments in more than one asset class, a public retirement system shall report fees according to the corresponding asset class.

(h) For a fund of funds, reported fees must include the top-layer management fees charged by the fund-of-fund manager and the fees charged by all subsidiary fund managers, and all profit share, reported as a single amount.

(i) A public retirement system must list the types of investment included in the "Alternative/Other" asset class as described in the 2020 ACC Guide.

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

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Tamara Aronstein

General Counsel

State Pension Review Board

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40 TAC §609.109

STATUTORY AUTHORITY

The proposed repeal is authorized under Texas Government Code §801.201, which authorizes the Board to adopt rules and Texas Government Code §802.103(e), which authorizes the Board to adopt rules for investment expense reporting and other annual financial report requirements.

The statutory provisions affected by the proposed repeal are those set forth in Texas Government Code §802.103. No other statutes, articles, or codes are affected by the proposed repeal.

§609.109. Investment Expense Reporting.

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

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