

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 13. REFERRALS TO PROSECUTORS

1 TAC §13.1

The Texas Ethics Commission (TEC) adopts, on an emergency basis, Chapter 13, §13.1, concerning the referral of matters to prosecuting attorneys under Section 571.171(a) of the Texas Government Code.

The TEC is adopting this emergency rule to address the Court of Criminal Appeals' (CCA) recent decision in *Ex Parte Charette*, No. PD-0522-01 (Tex. Crim. App. Sept. 11, 2024).

In accordance with Texas Government Code Sec. 2001.034, the emergency rule will be in effect for up to 120 days and may be renewed once for not longer than 60 days. During this time, the TEC intends to propose this rule or a similar rule for adoption on a permanent basis under the standard rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted emergency rule.

Background and Justification for the Emergency Rulemaking

The emergency rule is being adopted in response to the CCA's recent decision in *Ex Parte Charette*, which held that a referral from the TEC is a jurisdictional prerequisite to the bringing of criminal charges against a political candidate for campaign-law violations. The purpose of the emergency rule is to provide information regarding the TEC's procedures for making criminal referrals as authorized by Section 571.171(a) of the Texas Government Code.

Pursuant to Texas Government Code Sec. 2001.034, the new rule is adopted on an emergency basis in response to a requirement of law and with an expedited effective date because state law requires adoption of these rules on fewer than 30 days' notice.

Section-by-Section Summary

Subsection (a) clarifies the TEC's exercise of authority granted under section 571.171(a) of the Texas Government Code to refer matters to an appropriate prosecuting attorney for criminal prosecution upon a vote of at least six commission members.

Subsection (b) restates the requirement in section 571.134 of the Texas Government Code that certain referrals shall be delayed until (1) the day after election day; (2) the day after runoff election day if an ensuing runoff involving the alleged violator is held; or (3) the day after general election day if the election involved in the violation is a primary election and the alleged violator is involved in the succeeding general election.

Statutory Authority

The emergency rule is adopted under Texas Government Code Section 2001.034, which authorizes a state agency to adopt emergency rules without prior notice or hearing if the agency finds that a requirement of state law requires adoption of a rule on fewer than 30 days' notice.

The statutory provisions affected by the emergency rule are those set forth in Chapter 571 of the Texas Government Code, including Section 571.062, and the laws placed under the civil enforcement jurisdiction of the TEC as identified in Section 571.061(a) of the Texas Government Code.

§13.1. Referral to Prosecuting Attorney.

(a) Under section 571.171 of the Government Code, the commission may vote to refer a matter related to a sworn complaint to the appropriate prosecuting attorney for criminal prosecution upon the commission accepting jurisdiction over the sworn complaint.

(b) A referral under subsection (a) of this section shall be delayed in accordance with section 571.134 of the Government Code.

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

Filed with the Office of the Secretary of State on September 25, 2024.

TRD-202404615

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Effective date: September 25, 2024

Expiration date: January 22, 2025

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