

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 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission proposes amendments to §18.31, regarding Adjustments to Reporting Thresholds.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2022, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 4 of §18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

The General Counsel has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. 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 rule.

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, it will: not create or eliminate a government program; not require the cre-

ation 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; not increase or decrease the number of individuals subject to the rules' applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed amended rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, 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 rule may do so at any Commission meeting during the agenda item relating to the proposed amended rule. 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 amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§18.31. Adjustments to Reporting Thresholds.

(a) Pursuant to section 571.064 of the Government Code, the reporting thresholds are adjusted as follows:

Figure 1: 1 TAC §18.31(a)

~~[Figure 1: 1 TAC §18.31(a)]~~

Figure 2: 1 TAC §18.31(a)

~~[Figure 2: 1 TAC §18.31(a)]~~

Figure 3: 1 TAC §18.31(a)

~~[Figure 3: 1 TAC §18.31(a)]~~

Figure 4: 1 TAC §18.31(a)

~~[Figure 4: 1 TAC §18.31(a)]~~

(b) The changes made by this rule apply only to conduct occurring on or after the effective date of this rule.

(c) The effective date of this rule is January 1, 2022~~[2021]~~.

(d) In this section:

(1) "CEC" means county executive committee;

(2) "DCE" means direct campaign expenditure-only filer;

(3) "GPA" means general-purpose political committee;

(4) "MPAC" means monthly-filing general-purpose political committee;

(5) "PAC" means political committee;

- (6) "PFS" means personal financial statement;
 (7) "SPAC" means specific-purpose political committee;
 and
 (8) "TA" means treasurer appointment.

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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J.R. Johnson

General Counsel

Texas Ethics Commission

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission (the Commission) proposes amendments to Texas Ethics Commission rules in Chapter 20. Specifically, the Commission proposes amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders; §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2022, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments 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 amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. 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; not 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; not increase or decrease the number of individuals subject to the rules' applicability; or not 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 Anne Temple Peters, 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 B. GENERAL REPORTING RULES

1 TAC §20.62, §20.65

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.62. Reporting Staff Reimbursement.

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$6,450 [~~\$6,370~~] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

(1) the amount of political expenditures that in the aggregate exceed \$190 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and

(2) included with the total amount or a specific listing of the political expenditures of \$190 or less made during the reporting period.

(b) Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows:

(1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee;

(2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and

(3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.

§20.65. Reporting No Activity.

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File) even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

(1) special pre-election reports;

(2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than \$940 [§930] in political contributions or make more than \$940 [§930] in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

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. REPORTING REQUIREMENTS FOR A CANDIDATE

1 TAC §§20.217, 20.220, 20.221

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute; and Texas Government Code §2155.003, which requires the Commission to adopt rules to implement that section.

The proposed amended rules affect Title 15 of the Election Code.

§20.217. Modified Reporting.

(a) An opposed candidate who does not intend to accept more than \$940 [§930] in political contributions or make more than \$940 [§930] in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.

(b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than \$940 [§930] in political contributions or make more than \$940 [§930] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.

(e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) If an opposed candidate exceeds either of the \$940 [§930] limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the \$940 [§930] limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.220. Additional Disclosure for the Texas Comptroller of Public Accounts.

(a) For purposes of this section and §2155.003(e) of the Government Code, the term "vendor" means:

(1) a person, who during the comptroller's term of office, bids on or receives a contract under the comptroller's purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code; and

(2) an employee or agent of a person described by subsection (a)(1) of this section who communicates directly with the chief clerk, or an employee of the Texas Comptroller of Public Accounts who exercises discretion in connection with the vendor's bid or contract, about a bid or contract.

(b) Each report filed by the comptroller or a specific-purpose committee created to support the comptroller, shall include:

(1) for each vendor whose aggregate campaign contributions equal or exceed \$620 [\$640] during the reporting period, a notation that:

(A) the contributor was a vendor during the reporting period or during the 12 month period preceding the last day covered by the report; and

(B) if the vendor is an individual, includes the name of the entity that employs or that is represented by the individual; and

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed \$620 [\$640] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12 month period preceding the last day covered by the report.

(c) The comptroller, or a specific-purpose committee created to support the comptroller, is considered to be in compliance with this section if:

(1) each written solicitation for a campaign contribution includes a request for the information required by subsection (b) of this section; and

(2) for each contribution that is accepted for which the information required by this section is not provided at least one oral or written request is made for the missing information. A request under this subsection:

(A) must be made not later than the 30th day after the date the contribution is received;

(B) must include a clear and conspicuous statement requesting the information required by subsection (b) of this section;

(C) if made orally, must be documented in writing; and

(D) may not be made in conjunction with a solicitation for an additional campaign contribution.

(d) The comptroller, or a specific-purpose committee created to support the comptroller, must report the information required by subsection (b) of this section that is not provided by the person making the political contribution and that is in the comptroller's or committee's records of political contributions or previous campaign finance reports required to be filed under Title 15 of the Election Code filed by the comptroller or committee.

(e) If the comptroller, or a specific-purpose committee created to support the comptroller, receives the information required by this section after the filing deadline for the report on which the contribution is reported the comptroller or committee must include the missing information on the next required campaign finance report.

(f) The disclosure required under subsection (b) of this section applies only to a contributor who was a vendor or a political committee directly established, administered, or controlled by a vendor on or after September 1, 2007.

§20.221. Special Pre-Election Report by Certain Candidates.

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,890 [\$1,860] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, a candidate must file a special pre-election report so that the report is received by the commission no later than the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during that period, the candidate must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the candidate accepts the contribution.

(e) A candidate must file a special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, so that the report is received by the commission no later than 5 p.m. of the first business day after the candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(f) A candidate must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(g) A candidate must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, 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.

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Texas Ethics Commission

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SUBCHAPTER D. REPORTING REQUIREMENTS FOR AN OFFICEHOLDER WHO DOES NOT HAVE A CAMPAIGN TREASURER APPOINTMENT ON FILE

1 TAC §20.275

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rule affects Title 15 of the Election Code.

§20.275. Exception from Filing Requirement for Certain Local Officeholders.

An officeholder is not required to file a semiannual report of contributions and expenditures if the officeholder:

- (1) is required to file with an authority other than the commission;
- (2) does not have a campaign treasurer appointment on file; and
- (3) does not accept more than \$940 [\$930] in political contributions or make more than \$940 [\$930] in political expenditures during the reporting period.

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. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

1 TAC §§20.301, 20.303, 20.313, 20.329, 20.333

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.301. Thresholds for Campaign Treasurer Appointment.

(a) A specific-purpose committee may not accept political contributions exceeding \$920 [\$940] and may not make or authorize political expenditures exceeding \$920 [\$940] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [\$940] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

§20.303. Appointment of Campaign Treasurer.

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$920 [\$940] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.313. Converting to a General-Purpose Committee.

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission.

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

- (1) occurs after the committee's change in status; and
- (2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds \$920 [\$940] in political expenditures or \$920 [\$940] in political contributions as a general-purpose committee.

§20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than \$940 [\$930] in political contributions or make more than \$940 [\$930] in political expenditures (excluding filing fees) in connection with any election in an election cycle.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than \$940 [\$930] in political contributions or make more than \$940 [\$930] in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment.

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the §940 [§930] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the §940 [§930] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a special pre-election report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the §940 [§930] limits for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title (relating to Pre-Election Reports), in addition to any required special pre-election reports.

§20.333. Special Pre-Election Report by Certain Specific-Purpose Committees.

(a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the day before an election. Reports under this section are known as "special pre-election" reports.

(b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,890 [\$1,860] must file special pre-election reports.

(c) Except as provided in subsection (e) of this section, the campaign treasurer of a specific-purpose committee must file a report so that the report is received by the commission no later than the first business day after the committee accepts a contribution from a person that triggers the requirement to file the special pre-election report.

(d) If, during the reporting period for special pre-election contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a special pre-election report during the period, the campaign treasurer for the committee must file an additional special pre-election report for each such contribution. Except as provided in subsection (e) of this section, each such special pre-election report must be filed so that it is received by the commission no later than the first business day after the committee accepts the contribution.

(e) The campaign treasurer of a specific-purpose committee must file a special pre-election report for each person whose contribution or contributions made during the period for special pre-election reports exceed the threshold for special pre-election reports.

(f) A campaign treasurer of a specific-purpose committee must also report contributions reported on a special pre-election report on the next semiannual, pre-election, or runoff report filed, 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.

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SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

1 TAC §§20.401, 20.405, 20.434, 20.435

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.401. Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.

(a) A general-purpose committee may not accept political contributions exceeding \$920 [\$910] and may not make or authorize political expenditures exceeding \$920 [\$910] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [\$910] to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

§20.405. Campaign Treasurer Appointment for a General-Purpose Committee.

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$920 [\$910] in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, in-

cluding a report following the termination of his or her appointment as campaign treasurer.

§20.434. Alternate Reporting Requirements for General-Purpose Committees.

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than \$27,380 [\$27,000] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

(b) The alternative reporting requirement in Election Code §254.1541 applies only to contributions.

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$190 instead of the threshold reporting amount of \$90 set out in §20.433(a)(11) and (a)(20)(B) of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.154 apply shall include the information required by §20.433 of this title (Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions of \$40 instead of the threshold reporting amount of \$20 set out in §20.433(a)(11) and (a)(20)(B) of this title.

§20.435. Special Pre-Election Reports by Certain General-Purpose Committees.

(a) In addition to other reports required by this chapter, a general-purpose committee must file a special pre-election report if the committee is involved in an election and if it:

(1) makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed \$1,890 [\$1,860] or a group of candidates that in the aggregate exceed \$28,330 [\$27,950] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed \$6,450 [\$6,370] during the reporting period for special pre-election reports.

(b) The period for special pre-election reports begins on the ninth day before election day and ends at noon on the day before election day.

(c) Except as provided by subsection (d) of this section, a report under this section must be received by the commission no later than the first business day after the contribution is accepted or the expenditure is made.

(d) A special pre-election report that is exempt from electronic filing under §254.036(c), Election Code, must be received by the commission no later than 5 p.m. of the first business day after the contribution is accepted or the expenditure is made.

(e) Expenditures and contributions reported under this section must be reported again in the next applicable sworn report of contributions and 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.

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J.R. Johnson

General Counsel

Texas Ethics Commission

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SUBCHAPTER I. RULES APPLICABLE TO A POLITICAL PARTY'S COUNTY EXECUTIVE COMMITTEE

1 TAC §20.553, §20.555

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§20.553. Campaign Treasurer Appointment Not Required for County Executive Committee Accepting Contributions or Making Expenditures under Certain Amount.

(a) A county executive committee accepting political contributions or making political expenditures totaling \$34,220 [\$33,750] or less in a calendar year is not required to:

(1) appoint a campaign treasurer before accepting political contributions or making political expenditures; or

(2) file the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee described in subsection (a) of this section is required to comply with §20.551 of this title (relating to Obligation To Maintain Records).

§20.555. County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter.

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed \$34,220 [\$33,750] in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under §253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the \$34,220 [\$33,750] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the \$34,220 [\$33,750] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the \$34,220 [\$33,750] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the \$34,220 [\$33,750] thresholds in the calendar year.

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 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §22.1, §22.7

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission proposes amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, and §22.7, regarding Contribution from Out-of-State Committee.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2022, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments 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 amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. 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; not 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; not increase or decrease the number of individuals subject to the rules' applicability; or not 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 Anne Temple Peters, 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.

The amendments are proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Title 15 of the Election Code.

§22.1. Certain Campaign Treasurer Appointments Required before Political Activity Begins.

(a) An individual must file a campaign treasurer appointment with the proper authority before accepting a campaign contribution or making or authorizing a campaign expenditure.

(1) An officeholder may accept an officeholder contribution and make or authorize an officeholder expenditure without a campaign treasurer appointment on file.

(2) An officeholder who does not have a campaign treasurer appointment on file may not accept a campaign contribution or make or authorize a campaign expenditure.

(b) A political committee may not accept political contributions exceeding \$920 [\$940] and may not make or authorize political expenditures exceeding \$920 [\$940] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$920 [\$940] to support or oppose a candidate in a primary or general election for the following:

(1) a statewide office;

- (2) a seat in the state legislature;
- (3) a seat on the State Board of Education;
- (4) a multi-county district office; or
- (5) a judicial district office filled by voters of only one county.

(d) This section does not apply to the county executive committee of a political party except as provided in Chapter 20, Subchapter I of this title (relating to Rules Applicable to a Political Party's County Executive Committee).

§22.7. *Contribution from Out-of-State Committee.*

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than \$940, [§930,] the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed \$940 [§930] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than \$190 to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed \$940. [§930.]

(d) A candidate, officeholder, or political committee that:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods; and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling \$940 [§930] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the telephone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

(i) the individual's full name;

(ii) the individual's residence or business street address; and

(iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

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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J.R. Johnson

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1 TAC §22.37

The Texas Ethics Commission (the Commission) proposes a new Texas Ethics Commission rule in Chapter 22. Specifically, the Commission proposes new §22.37, regarding Cryptocurrency Contributions.

The Commission seeks to address and clarify the reporting requirements of political contributions made with cryptocurrency, such as Bitcoin. The proposal largely mirrors the way the Federal Election Commission and several other states treat cryptocurrency contributions.

The new rule permits candidates, officeholders, and political committees to accept cryptocurrency. It does it distinguish between any types of cryptocurrencies, like Bitcoin. The rule would require filers to report cryptocurrency as in-kind contributions. Campaigns would be required to liquidate any cryptocurrency before spending the proceeds; they would not be permitted to use cryptocurrency as a currency. This approach mirrors not only the FEC, but also the IRS and SEC, which treat cryptocurrency holdings as investments, not currency.

The new rule would also direct filers to report the value of any accepted cryptocurrency as the fair market value at the time of receipt. This requirement is designed to address the well-known volatility of cryptocurrency value and provide guidance on how to report the value of cryptocurrency contributions. The rule would not require filers to liquidate their cryptocurrency holdings within any particular timeframe.

Finally, the new rule would require filers to determine the legality of any accepted cryptocurrency contribution and obtain certain information from the contributor, including an affirmation that the contributor is not a foreign national. Filers would be required to obtain this information by the time the next report was owed.

J.R. Johnson, General Counsel, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

The General Counsel has also determined that for each year of the first five years the proposed new rule is in effect, the public benefit will be consistency and clarity in the Commission's rules regarding acceptance of cryptocurrency. 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 new rule.

The General Counsel has determined that during the first five years that the proposed new rule is in effect, it will: not create or eliminate a government program; not 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; not increase or decrease the number of individuals subject to the rule's applicability; or not positively or adversely affect this state's economy.

The Commission invites comments on the proposed new rule from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us, or mailed or delivered to Anne Temple Peters, 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 new rule may do so at any Commission meeting during the agenda item relating to the proposed new rule. 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 new rule is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed new rule affects Title 15 of the Election Code.

§22.37. Cryptocurrency Contributions.

(a) Candidates, officeholders, political committees, and legislative caucuses may accept cryptocurrency contributions.

(b) Cryptocurrency contributions are considered "in-kind" contributions.

(c) Cryptocurrency may not be used to make expenditures. A candidate, officeholder, political committee, or caucus must sell cryptocurrency and deposit the proceeds from the sale into an account before making an expenditure from a cryptocurrency contribution.

(d) A candidate, officeholder, or political committee must report a gain from the sale of cryptocurrency contributions on the appropriate schedule if the gain exceeds the reporting threshold set by Section 254.031(9) of the Election Code and amended by Commission Rule 18.31.

(e) The value of a cryptocurrency contribution is the fair market value of the cryptocurrency upon receipt.

(f) A candidate, officeholder, political committee, or caucus who accepts cryptocurrency contributions has the obligation to determine the legality of the cryptocurrency contributions. For a cryptocurrency contribution to be legal and eligible, a candidate, officeholder, political committee, or caucus must obtain the following information before accepting the contribution:

(1) The contributor's full name;

(2) The contributor's physical address;

(3) The contributor's current employer;

(4) An affirmation that the contributor is in-fact the owner of the cryptocurrency being donated;

(5) An affirmation that the contributor is not a foreign national who has not been granted permanent residence in the United States; and

(6) An affirmation that the contributor is not a corporation or labor organization.

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 34. REGULATION OF LOBBYISTS

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.41, §34.43

The Texas Ethics Commission (the Commission) proposes an amendment to Texas Ethics Commission rules in Chapter 34. Specifically, the Commission proposes amendments to §34.41, regarding Expenditure Threshold, and §34.43, regarding Compensation and Reimbursement Threshold.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2022, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in these amended rules are also duplicated in numerous statutes, as referenced above; amendments to the affected statutes are included with the amendments to Figures 1 through 4 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

J.R. Johnson, General Counsel, has determined that for the first five-year period the rule amendments 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 amended rules are in effect, the public benefit will be consistency and clarity in the Commission's rules that set out reporting thresholds. 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; not 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; not increase or decrease the number of individuals subject to the rules' applicability; or not 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 Anne Temple Peters, 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.

The amendments are proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules to administer Chapter 305 of the Election Code; Texas Government Code §305.003, which authorizes the Commission to determine by rule the amount of expenditures made or compensation received over which a person is required to register as a lobbyist; and Texas Government Code §571.064, which requires the Commission to annually adjust reporting thresholds in accordance with that statute.

The proposed amended rules affect Chapter 305 of the Government Code.

§34.41. Expenditure Threshold.

(a) A person must register under Government Code, §305.003(a)(1), if the person makes total expenditures of more than \$820 [~~\$840~~] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code, §305.006(b), to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

(b) An expenditure made by a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state acting in his or her official capacity is not included for purposes of determining whether a person is required to register under Government Code, §305.003(a)(1).

(c) An expenditure made in connection with an event to promote the interests of a designated geographic area or political subdivision is not included for purposes of determining whether a person has crossed the registration threshold in Government Code, §305.003(a)(1), if the expenditure is made by a group that exists for

the limited purpose of sponsoring the event or by a person acting on behalf of such a group.

§34.43. Compensation and Reimbursement Threshold.

(a) A person must register under Government Code, §305.003(a)(2), if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than \$1,640 [~~\$1,620~~] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) For purposes of Government Code, §305.003(a)(2), and this chapter, a person is not required to register if the person spends not more than 40 hours for which the person is compensated or reimbursed during a calendar quarter engaging in lobby activity, including preparatory activity as described by §34.3 of this title.

(c) For purposes of Government Code, §305.003(a)(2), and this chapter, a person shall make a reasonable allocation of compensation between compensation for lobby activity and compensation for other 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.

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.2

The Commission on State Emergency Communications (CSEC) proposes amendments to 1 TAC §251.2, concerning changes to or extending 9-1-1 service arrangements including a change in the rule title.

BACKGROUND AND PURPOSE

CSEC proposes amendments to §251.2 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code) relating to 9-1-1 service arrangements. The primary purposes of the amendments are (1) to make the rule non-911 administrative entity specific to allow the rule to be adopted by Emergency Communication Districts (ECDs); and (2) streamline and shorten the rule by deleting outdated text and text applicable only to Regional Planning Commissions. As amended, the key requirement of the rule is that 9-1-1 administrative entities must provide reasonable notice to and work with neighboring and adjacent 9-1-1 administrative entities to ensure changes in 9-1-1 service arrangements are coordinated with potentially affected other 9-1-1 administrative entities.

SECTION-BY-SECTION EXPLANATION

Section 251.2(a) is amended to delete the requirement to report 9-1-1 service arrangements and clarify that the rule is applicable only to implementing changes in such arrangements.

Section 251.2(b) is deleted. CSEC's Definitions rule (§252.7) remains applicable but the reference to the rule (§251.2(b)) is proposed for deletion and the remaining subsections re-lettered accordingly.

Section 251.2(b) (re-lettered current section (c)) is amended to be "Standards"; identify the reference authority for commonly accepted standards; and to require CSEC's Emergency Communications Advisory Committee to advise CSEC on matters including standards for interoperability and interconnection of 9-1-1 administrative entities' Emergency Services Internet Protocol Networks per CSEC §252.8.

Section 251.2(c) (re-lettered current subsection (d)) is amended to be "Requirements"; delineate the requirements for 9-1-1 Database Management Services Providers and 9-1-1 Network Services Providers in changing 9-1-1 service arrangements; delete outdated text and delete/revise text previously only applicable to RPCs; adds new §251.2(c)(1)(B) to require that all necessary certifications, prerequisites, and agreements under applicable laws and regulations (specifically Public Utility Commission rules) are obtained, completed, and approved; and replaces and revises existing §251.2(c)(1)(B) as §251.2(c)(2) including renaming the paragraph to "Texas 9-1-1 Administrative Entity Requirements," and to require such entities to provide reasonable notice to all neighboring or adjacent 9-1-1 entities potentially affected by a change in 9-1-1 service arrangements.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §251.2 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections. Changes in 9-1-1 service arrangements are initiated by and at the direction of each 9-1-1 administrative entity. As amended the rule does not affect the authority of a 9-1-1 administrative entity to initiate or control changes in its 9-1-1 service arrangements.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to ensure that a 9-1-1 administrative entity's changes to its 9-1-1 service arrangements are noticed and coordinated with potentially affected neighboring or adjacent 9-1-1 administrative entities to avoid any disruptions or degradations in 9-1-1 service as a result of changes to existing 9-1-1 service arrangements.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section 2001.0045(b) is not applicable as no costs are imposed on regulated persons as a result of the amendments. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule affects only 9-1-1 administrative entities, including their contracted 9-1-1 database and network service providers; and affects ECD 9-1-1 administrative entities only to the extent they separately adopt the rule. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amended section is proposed pursuant to Health and Safety Code §§771.051, 771.055 - 771.056; and Title 1 Texas Administrative Code, Part 12, Chapter 251, Regional Plan Standards.

No other statute, article, or code is affected by the proposal.

§251.2. Changes to [Guidelines for Changing or Extending] 9-1-1 Service Arrangements.

(a) Purpose. The purpose of this rule is to establish minimum requirements for implementing changes to [implementation and reporting of] 9-1-1 service arrangements in order to protect against degradation of service.

{(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 252.7, Definitions.}

(b) [(e) Standards. [Industry standard:] All goods, services, systems, or technology purchased with 9-1-1 funds must [shall] be consistent with the current commonly accepted standards for enhanced and next-generation 9-1-1 [industry standard]. The reference [authority] for commonly accepted standards [the industry standard] for 9-1-1 networks, equipment, services, and databases is the National 911 Implementation and Coordination Office, commonly referred to as the National 9-1-1 Office. The Emergency Communications Advisory Committee will advise the Commission on matters including standards for statewide interoperability and interconnection of Texas 9-1-1 Administrative Entities' Emergency Services Internet Protocol Networks as provided in Commission Rule §252.8, Emergency Communications Advisory Committee. [Emergency Number Association (NENA).]

(c) [(d) Requirements to prevent degradation of 9-1-1 service. [Vendor requirements.]]

(1) 9-1-1 Database Management Services Provider and 9-1-1 Network Services Provider Requirements. [Changes or extensions of 9-1-1 service arrangements must include the following:]

(A) The service provider, including 9-1-1 Next Generation Core Services Provider, making the proposal to the Texas 9-1-1 Administrative Entity [RPC] verifies in writing, as part of the proposed agreement, that:

(i) Service provider will participate in joint planning meetings with affected service providers and Texas 9-1-1 Administrative Entities as necessary to prevent degradation of 9-1-1 service;

(ii) [(i)] Reasonable notice of the proposal (i.e., at least 10 days before a joint planning meeting) has been provided to the current service provider (if a change in service providers is involved) and to other potentially affected service providers; [-]

(iii) [(ii)] The service provider also verifies that at least one joint planning meeting occurred with at least 10 days' [days] notice to all affected service providers that they may participate in the joint planning meeting; and

(iv) [(iii)] As a result of the joint planning meeting either each technical issue or objection by other service providers has fully been resolved or an impartial statement of each unresolved issue or objection has been provided (a [- (A) joint planning meeting is open to evaluate all alternatives and is not limited to a discussion of one service provider's proposal). [-])

{(iv) An inventory of each affected exchange, central office, tandem, private switch, PBX, or Mobile Telephone Switching Office (MTSO) has been provided to all affected service providers and the RPC/District that is involved.}

{(v) Cost verification of all costs under the proposal and an itemized comparison with all costs under current rates (e.g., itemized list and comparison of all charges for each level of service, for all database service, etc.) Any and all changes in E9-1-1 or 9-1-1 service features (i.e., all additional service features or reductions in service features that may result from the proposal) must be clearly specified. The service provider must also explain the justifications for any and all

changes and why those changes do not degrade the level of 9-1-1 service and are consistent with providing the highest level of 9-1-1 service to all customers.}

{(vi) The service provider shall take full responsibility to professionally and timely coordinate all 9-1-1 service changes and modifications with all impacted telecommunications service providers, including, but not limited to: wireline, wireless, database and private switch service providers involved in the geographic area.}

{(vii) The service provider shall verify/certify that any necessary new or modified interconnection agreements relating to 9-1-1 service will be approved by the Public Utility Commission of Texas before the effective date of the proposed agreement and as necessary thereafter.}

{(viii) The proposal includes a statement of work to be performed that includes:}

{(I) an implementation schedule;}

{(II) diagrams of all proposed changes;}

{(III) how testing will be conducted and documented;}

{(IV) contingency plans and physical diversity;}

{(V) how interfaces with other service providers will be accomplished and coordinated;}

{(VI) a comprehensive list of all components and processes necessary for implementation;}

{(VII) a comprehensive list of all components and processes necessary for database service implementation, including Emergency Service Number (ESN) assignments, Master Street Address Guide (MSAG) revisions, selective routing tables, Emergency Service Routing Digit (ESRD), wireless cell site locations and distribution to other service providers;}

{(VIII) an outline of all associated costs; and}

{(IX) an explanation of any potential Customer Premises Equipment (CPE) impacts, or necessary modifications.}

{(ix) The proposal provides for wireless service providers to be able to deliver wireless Phase I or wireless Phase II information on request, and any modifications necessary to deliver callback and location information on/or before the deadlines as required by the Federal Communications Commission.}

{(x) The proposal provides for and enables long-term number portability (LNP) or that any modifications necessary for LNP will be specified.}

{(xi) The proposal specifies any additional costs to any PSAP or 9-1-1 entity for any modifications necessary during the period of the agreement because of Number Plan Area (NPA) splits and/or existing tandem or other network limitations.}

{(xii) The proposal provides that there will be no additional costs to any PSAP or 9-1-1 entity to maintain the current level of E9-1-1 service, except as specifically set forth in an itemized list that is part of the proposed agreement.}

{(xiii) No further agreement by the RPC is necessary to implement the proposal (e.g., the service provider and not the RPC is responsible for any and all coordination with other parties or service providers that may be necessary to implement the proposal).}

{(xiv) A most favored nation provision (i.e., a provision that requires the best price provided to any other similarly situated

entity in Texas for comparable service) is included in the agreement and the service provider will automatically reduce the rates and charges in the agreement if comparable service is offered in Texas at a lower rate or charge by that service provider to any similarly situated other PSAP or 9-1-1 entity.}]

~~[(xv)] The service provider will comply with all applicable law, Commission and Public Utility Commission of Texas rules or regulations relating to 9-1-1 service.}]~~

(B) All certifications, prerequisites, and agreements requiring approval under applicable laws and regulations, specifically including Public Utility Commission's §§26.272, 26.433, and 26.435 (16 TAC Part 2, Chapter 26) as they pertain to 9-1-1 service, have been obtained, completed, and approved. [RPC Requirements: Prior to the implementation of a change in a 9-1-1 service arrangement, an RPC shall meet the following requirements:]

~~[(i)] Competitive procurement procedures were used in accordance with Texas Uniform Grant Management Standards (UGMS) and Commission Rule 251.8, Regional Planning Commission Procurement of 9-1-1 Equipment and Services with 9-1-1 Funds.}]~~

~~[(ii)] All neighboring or adjacent 9-1-1 entities that could potentially be affected by the plan amendment have been given reasonable notice.}]~~

~~[(iii)] All appropriate modifications are made to current interlocal agreements; and}]~~

~~[(iv)] Submit a strategic plan amendment according to Commission policy.}]~~

(2) Texas 9-1-1 Administrative Entity Requirements. Prior to the implementation of a change in a 9-1-1 service arrangement, a Texas 9-1-1 Administrative Entity must give reasonable notice to all neighboring or adjacent 9-1-1 entities that could potentially be affected by the change. [Applicability to Emergency Communications Districts (Districts). Districts requesting 9-1-1 funds in accordance with established rules and procedures for 9-1-1 service arrangements shall ensure that any changes or extensions of service arrangements meet or exceed the guidelines for RPCs in this rule.]

~~[(3)] Costs. Annual budgeted costs associated with 9-1-1 service arrangements shall be monitored by Commission staff for consistency with this rule. Such costs that are determined by Commission staff to not be consistent with this section shall be reviewed by the Commission.}]~~

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 October 7, 2021.

TRD-202103986

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 305-6915



1 TAC §251.11

The Commission on State Emergency Communications (CSEC) proposes to repeal §251.11, concerning Regional Planning Commission (RPC) Monitoring.

SECTION-BY-SECTION EXPLANATION

§251.11, Regional Planning Commission Monitoring

CSEC proposes to repeal §251.11 as part of its transitioning the agency to "Next Generation." CSEC intends to update and replace the rule with a CSEC Program Policy Statement (PPS) as part of its NG9-1-1 Rules and PPS project.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that repealed §251.11 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the repeal.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the section is repealed, the public benefits anticipated will be to update and streamline the agency's rules and PPS to account for the implementation and corresponding requirements of Next Generation 9-1-1 technology, including information and cybersecurity monitoring of CSEC's RPC stakeholders.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section 2001.0045(b) is not applicable as no costs are imposed on regulated persons as a result of the repeal. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the repeal will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the repeal being proposed affects only the relationship between CSEC and its RPC grantee stakeholders. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The repeal is proposed pursuant to Health and Safety Code §§771.051, 771.055 - 771.057, 771.061, 771.075, 771.0751, 771.078 - 771.079.

No other statute, article, or code is affected by the proposal.

§251.11. *Regional Planning Commission 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 October 7, 2021.

TRD-202103987

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 305-6915



CHAPTER 252. ADMINISTRATION

1 TAC §252.3

The Commission on State Emergency Communications (CSEC) proposes amendments to 1 TAC §252.3, concerning sick leave pool.

BACKGROUND AND PURPOSE

CSEC proposes amendments to §252.3 (Title 1, Part 12, Chapter 252 of the Texas Administrative Code) relating to sick leave pool. The primary purpose of the amendments is to revise the current sick leave pool rule to account for "family sick leave pool" as enacted by the 87th Texas Legislature (HB 2063); including a change in the title of the rule to identify both the existing sick leave and newly enacted family leave pool programs.

SECTION-BY-SECTION EXPLANATION

The title of the rule is changed from "Sick Leave Pool" to "State Employee Sick Leave and Family Leave Pools."

Section 252.3(a) is amended to better account for the statutory requirements applicable to the sick leave pool.

Section 252.3(b) is a new section incorporating the statutory requirements from HB 2063 regarding family sick leave pool.

Section 252.3(c) (re-lettered section (b)) is amended to require the Executive Director to designate a Leave Pools administrator to administer both the sick leave and family sick leave pools.

Section 252.3(d) (re-lettered section (c)) is amended to require the Leave Pools administrator to include prescribed procedures for the sick leave and family leave pools in CSEC's Human Resources Manual.

Section 252.3(e) (re-lettered section (d)) is amended to clarify that donations to either pool must be for one or more days; and to account for each pool separately.

Section 252.3(f) (re-lettered section (e)) is amended to add that the family sick leave pool procedures must be consistent with Government Code Chapter 661; as the rule currently requires with respect to the sick leave pool.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §252.3 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to provide an additional leave pool for state employees to use to bond with a child and for caring for a seriously ill family member or the employee, including pandemic related illnesses or complications caused by a pandemic.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section 2001.0045(b) is not applicable as no costs are imposed on regulated persons as a result of the amendments. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affects only the relationship between CSEC and its RPC grantee stakeholders. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Health and Safety Code §771.051 and Government Code §§661.002 and 661.022.

No other statute, article, or code is affected by the proposal.

§252.3. *State Employee Sick and Family Leave Pools* [Pool].

(a) A sick leave pool program is established to help alleviate the hardship caused to a state [an] employee and the employee's immediate family if a catastrophic illness or injury or a previous donation to the sick leave pool forces the employee to exhaust their sick leave [all accrued leave time and to lose compensation from the state].

(b) A family leave pool program is established to provide a state employee more flexibility in:

(1) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and

(2) caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic.

(c) [(b)] The Commission's Executive Director shall designate a [Sick] Leave Pools [Pool] Administrator to administer the sick and family leave pool programs [program].

(d) [(e)] The [Sick] Leave Pools [Pool] Administrator, with the advice and consent of the Executive Director, shall prescribe procedures for the operation of the sick and family leave pool programs [program] and include such procedures in the Commission's Human Resources Policy and Procedures Manual.

(e) [(d)] Employee donations of one or more days of accrued sick leave to the sick leave pool or accrued sick or vacation leave to the family leave pool are strictly voluntary and must be made in writing.

(f) [(e)] Procedures for the operation of the sick and family leave pools will [pool program shall] be consistent with Texas Government Code, Chapter 661.

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 October 7, 2021.

TRD-202103988

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 305-6915



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.505, relating to Reporting Requirements and the Scarcity Pricing Mechanism in the Electric Reliability Council of Texas Power Region. These proposed amendments will lower the value of the high system-wide offer cap (HCAP) from the current \$9,000 per megawatt-hour (MWh) and \$9,000 per megawatt (MW) per hour to \$4,500 per MWh and \$4,500 per MW per hour.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

- (3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will not expand, limit, or repeal an existing regulation;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Werner Roth, Senior Market Economist, Market Analysis Division, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Roth has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be a decrease in expected consumer costs and a reduction of price volatility. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on November 1, 2021, if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 28, 2021. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing. If a

request for public hearing is received, commission staff will file in this project instructions on how a member of the public can participate in the hearing.

Public Comments

Comments may be filed through the interchange on the commission's website or by submitting a paper copy to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by October 28, 2021. Comments should be limited to five pages and organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 52631.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required. This executive summary does not count toward the five-page limit.

Statutory Authority

These amendments are proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §14.002, §39.101, and §39.151.

§25.505. Reporting Requirements and the Scarcity Pricing Mechanism in the Electricity Reliability Council of Texas Power Region.

(a) - (f) (No change.)

(g) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

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

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set at \$2,000 per MWh and \$2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$4,500 [~~\$9,000~~] per MWh and \$4,500 [~~\$9,000~~] per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(E) The value of the lost load will be equal to the value of the system-wide offer cap in effect.

(7) (No change.)

(h) (No change.)

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

Filed with the Office of the Secretary of State on October 8, 2021.

TRD-202103997

Melissa Ethridge

Assistant Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 936-7299



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter D, §130.40 and §130.42, Subchapter F, §130.60, and the repeal of an existing rule at Subchapter F, §130.61, regarding the Podiatry Program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 130 implement Texas Occupations Code, Chapter 202, Podiatrists.

The proposed rules implement Texas Occupations Code §202.261 by establishing a limited faculty license type, harmonize the waiver provisions for licensure between the full and provisional license rules, establish the fee and license term for a limited faculty license, and repeal an expired transition rule for license fees. The proposed rules are necessary to implement the limited faculty license for the opening of Texas's first podiatry school, the University of Texas Rio Grande Valley School of Podiatry. Additionally, the proposed rules are necessary to harmonize the provisions allowing the Department's executive director to waive the requirements for the Graduate Podiatric Medical Education (GPME) and National Board Part III (formerly known as PM Lexis). These waiver provisions are currently found in the provisional license rule (§130.43) and are being copied to the normal doctor of podiatric medicine license rule (§130.40). These waiver provisions were inadvertently left out when the podiatry program was transferred from the Texas State Board of Podiatric Medicine to the Department. They

continue to be relevant as other states did not implement the requirements for the GPME or National Board Part III until after Texas, hampering the application for podiatrists licensed in other jurisdictions. Finally, the proposed rules repeal the transition rule for two-year license terms (§130.61), which expired on August 31, 2020.

The proposed rules were presented to and discussed by the Podiatric Medical Examiners Advisory Board at its meeting on October 4, 2021. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted to recommend that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §130.40, Doctor of Podiatric Medicine License - General Requirements and Application. The proposed rules amend the title of the rule to "Doctor of Podiatric Medicine License - General Requirements and Application; Limited Faculty License." The proposed rules make clarifying changes in subsection (a), add a new subsection (b) outlining the issuance of limited faculty licenses as provided by Texas Occupations Code §202.261, add new subsections (c), (d) and (e) containing the waiver provisions for the GPME and National Board Part III requirements from the existing provisional license rule (§130.43), and reletter the other subsections accordingly.

The proposed rules amend §130.42, Doctor of Podiatric Medicine License--Term; Renewal, by adding a new subsection (d). The new subsection outlines the term of the limited faculty license, which is the same as a normal doctor of podiatric medicine license term except that the Department may terminate the license immediately upon receiving notice that the faculty appointment of the podiatrist holding the limited faculty license has been terminated.

The proposed rules amend §130.60, Fees, by adding new paragraphs (7) and (8) in subsection (b). These new paragraphs outline the initial license fee (\$125) and renewal fee (\$60) for the new limited faculty license. The other paragraphs are renumbered accordingly.

The proposed rules repeal §130.61, Transition Rule for Two-year License Terms, a rule which expired on August 31, 2020. The rule is no longer necessary as the transition to two-year licenses has been completed.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be a minimal increase in costs to state government as a result of enforcing or administering the proposed rules. Although processing the limited faculty license applications will add to the Department's licensing workload, the number of applicants in any year is expected to be small and thus will only create only a minimal increase in costs. It will not result in an increased need for personnel or resources but will increase staff time and resources spent in the Podiatry program. No other changes made by the proposed rules will result in additional costs. The activities required to implement those proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising publications and/or website information.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is an estimated increase in revenue to the state government as a result of enforce-

ing or administering the proposed rules. The proposed rules will create an increase in revenue as they create new application fees to be assessed for the limited faculty license, which will be issued for a two-year term. The initial license fee will be \$125, and the renewal fee will be \$60. The Department anticipates issuing approximately 20 initial limited faculty licenses in the first year. Although the turnover rate of these license holders among the faculty, or whether any vacant positions will be filled with limited faculty license holders, cannot be determined by the Department, it is estimated that approximately one initial license will be issued each year in the subsequent four years. Additionally, assuming a turnover rate of one license holder per year, 19 license holders will renew in the third and fifth years, and one license holder will renew in the fourth year. This will result in an increase of \$2,500 in the first fiscal year, \$125 in the second fiscal year, \$1,265 in the third fiscal year, \$185 in the fourth fiscal year, and \$1,265 in the fifth fiscal year after adoption.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the creation of the limited faculty license will allow Texas educational institutions with podiatry programs to employ podiatrists from other states as faculty members under the limited faculty license. Having a university with a podiatry program and residency positions benefits the public by increasing access to podiatric care. Also, enabling the school to employ faculty members from different areas and perspectives benefits podiatry students and assists the school in establishing adequate faculty for operations. Waiving certain licensing requirements for applicants with at least five years of practice and an acceptable record will increase the number of individuals who qualify for a Texas podiatry license, which will increase access to care for the public.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. The proposed rules have no economic costs to persons that are current licensees, or for businesses or the general public in Texas. The rules do impose a \$125 fee for the two-year term of a limited faculty license to cover the expense of processing applications, performing background checks, and issuing licenses, and if these license holders choose to renew their license, they will pay a \$60 renewal fee for an additional two-year license term. The remaining proposed rules do not create requirements that would cause licensees to expend funds for equipment, technology, staff, supplies or infrastructure. An applicant for a limited faculty license would pay \$125 in the first fiscal year after the proposed rules are adopted, a \$60 renewal fee in the third year after the rules are adopted, and another \$60

fee for renewal in the fifth year after the rules are adopted, for a total of \$245 in the five years after adoption.

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

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

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

The proposed rules do have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that are necessary to implement legislation, unless the legislature specifically states Texas Government Code §2001.0045 applies to the rule, under §2001.0045(c)(9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules will increase the fees paid to the agency by establishing fees in 16 TAC §130.60 to be paid by out-of-state podiatrists who apply for an initial or renewal limited faculty license. The limited faculty license requires an initial \$125 fee and a \$60 renewal fee.
5. The proposed rules do not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement Texas Occupations Code §202.261 by amending 16 TAC §130.40 and §130.42 to create a new limited faculty license type and establish its term, create new waiver provisions in the existing doctor of podiatric license rule for an out-of-state podiatrist applicant for a Texas podiatry license, and repeal 16 TAC §130.61, an expired rule for the transition to two-year license terms for podiatrists.
7. The proposed rules do increase or decrease the number of individuals subject to the rules' applicability. The proposed rules will increase the number of individuals subject to the rule's applicability by the number of out-of-state podiatrists who obtain a limited faculty license.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §130.40, §130.42

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the proposed rules.

§130.40. Doctor of Podiatric Medicine License--General Requirements and Application; Limited Faculty License.

(a) An applicant for a license to practice podiatry [Any person who wishes to practice podiatric medicine] in this state must:

(1) - (3) (No change.)

(4) successfully pass all required sections of the American Podiatric Medical Licensing Examination [and the jurisprudence examination] ;

(5) successfully pass the jurisprudence examination, except as provided in subsection (b);

(6) [(5)] successfully complete at least one year of GPME in a program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association with a hospital, clinic, or institution acceptable to the department (successful completion means the GPME program which was actually begun/matriculated is completed; the applicant must have successfully completed the entire program; partial program attendance is not acceptable);

(7) [(6)] pay all applicable fees;

(8) [(7)] submit a completed application on a department-approved form;

(9) [(8)] submit all transcripts of relevant college coursework, acceptable to the department;

(10) [(9)] successfully pass a criminal history background check performed by the department;

(11) [(40)] provide proof of successful completion of a course in cardiopulmonary resuscitation (CPR); and

(12) [(44)] successfully pass a National Practitioner Data Bank query check performed by the department.

(b) The department may issue a limited faculty license to practice podiatry only for purposes of instruction in an educational institution to a podiatrist who has not completed the jurisprudence examination required in subsection (a)(5), if the applicant:

(1) at the time of applying for a limited faculty license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) holds a license to practice podiatry from another state with licensing requirements that are substantially equivalent to the requirements established by this subchapter; and

(3) otherwise satisfies the requirements of this section.

(c) At the discretion of the executive director, the GPME requirement may be waived if the applicant has been in active podiatric practice for at least five continuous years in another state under license of that state, and upon application to the department demonstrates an acceptable record from that state and from all other states under which the applicant has ever been licensed. The GPME requirement became effective in Texas on July 1, 1995.

(d) At the discretion of the executive director, the executive director may excuse an applicant for a license from the National Board Part III (formerly known as PM Lexis) requirement if the executive director determines that an applicant with substantially equivalent experience was not required to pass a part of an examination related to the testing of clinical skills when the applicant was licensed in this or another state with an acceptable record, provided that the applicant has been in active licensed practice for at least five continuous years and has successfully completed any other course of training reasonably required by the executive director relating to the safe care and treatment of patients. The National Board Part III/PM Lexis came into existence in June 1987. Texas began the National Board Part III/PM Lexis requirement for licensure on January 29, 1992.

(e) A showing of an acceptable record under this section is defined to include, but is not limited to:

(1) a showing that the applicant has not had entered against them a judgment, civil or criminal, in state or federal court or other judicial forum, on a podiatric medical-related cause of action; no conviction of or deferred adjudication for a felony; no disciplinary action recorded from any medical institution or agency or organization, including, but not limited to, any licensing board, hospital, surgery center, clinic, professional organization, governmental health organization, or extended-care facility; and no dishonorable discharge from military service.

(2) If any judgment or disciplinary determination under this subsection, has been on appeal, reversed, reversed and rendered, or remanded and later dismissed, or in any other way concluded in favor of the applicant, it shall be the applicant's responsibility to bring such result to the notice of the department by way of certified letter along with any such explanation of the circumstances as the applicant deems pertinent to the determination of admittance to licensure in this state.

(3) The applicant shall obtain and submit to the department a letter directly from all state boards under which they have ever been

previously licensed stating that the applicant is a licensee in good standing with each said board or that said prior license or licenses were terminated or expired with the licensee in good standing.

(f) [(b)] The department approves and adopts by reference the Standards and Requirements for Approval of Residencies in Podiatric Medicine and Surgery and Procedures for Approval of Residencies in Podiatric Medicine and Surgery adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(g) [(e)] The department approves and adopts by reference the Standards and Requirements for Accrediting Colleges of Podiatric Medicine and Procedures for Accrediting Colleges of Podiatric Medicine adopted by the Council on Podiatric Medical Education of the American Podiatric Medical Association.

(h) [(d)] The department may require additional information from an applicant who has been out of practice for more than two years and require the applicant to complete additional education, examinations, or training before issuing a license to ensure the podiatrist possesses reasonable knowledge, skill and competence for the safe care and treatment of patients.

(i) [(e)] The applicant shall submit evidence sufficient for the department to determine that the applicant has met all the requirements and any other information reasonably required by the department. Any application, diploma or certification, or other document required to be submitted to the department that is not in the English language must be accompanied by a certified translation into English.

§130.42. Doctor of Podiatric Medicine License--Term; Renewal.

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

(d) A limited faculty license to practice podiatry only for purposes of instruction in an educational institution is valid for the term indicated in subsection (a), except that the department shall terminate a limited faculty license immediately upon receiving notice that the faculty appointment of the podiatrist holding the limited faculty license is terminated. The termination of a limited faculty license does not prohibit or otherwise impair the ability of a podiatrist to apply for or hold another license type issued under 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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TRD-202104001

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 463-3671

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SUBCHAPTER F. FEES

16 TAC §130.60

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters

and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 202. No other statutes, articles, or codes are affected by the proposed rules.

§130.60. Fees.

(a) (No change.)

(b) Fees are as follows:

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

(6) Limited Faculty Initial License--\$125

(7) Limited Faculty Renewal License--\$60

(8) [(6)] Voluntary Charity Care Status License (Initial and Renewal)--\$0

(9) [(7)] Active Duty Military Members--\$0

(10) [(8)] Hyperbaric Oxygen Certificate--\$25

(11) [(9)] Nitrous Oxide Registration--\$25

(12) [(10)] Podiatric Medical Radiological Technicians--\$25

(13) [(11)] Duplicate License/replacement license--\$25

(14) [(12)] The fee for a criminal history evaluation letter is the fee prescribed under §60.42 (relating to Criminal History Evaluation Letters).

(15) [(13)] A dishonored/returned check or payment fee is the fee prescribed under §60.82 (relating to Dishonored Payment Device).

(16) [(14)] Late renewal fees for licenses issued under this chapter are provided under §60.83 (relating to Late Renewal Fees).

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671

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16 TAC §130.61

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and

202. No other statutes, articles, or codes are affected by the proposed repeal.

§130.61. *Transition Rule For Two-year License Terms.*

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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Brad Bowman

General Counsel

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For further information, please call: (512) 463-3671



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1007

The Texas Education Agency (TEA) proposes an amendment to §74.1007, concerning college and career readiness. The amendment would modify the guidelines for the annual calculation of the College, Career, or Military Readiness (CCMR) Outcomes Bonus to implement House Bill (HB) 1147 and HB 1525, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, established the CCMR Outcomes Bonus. The CCMR Outcomes Bonus allows TEA to annually award districts funds based on a district's number of annual graduates in excess of the statewide 25th percentile for CCMR, disaggregated by economically disadvantaged status and by enrollment in a special education program under Texas Education Code (TEC), Subchapter A, Chapter 29.

HB 1147, 87th Texas Legislature, Regular Session, 2021, amended TEC, §48.110, by adding enlistment in the Texas National Guard as an additional way for graduates to earn CCMR credit.

HB 1525, 87th Texas Legislature, Regular Session, 2021, also amended TEC, §48.110, by adding earning an associate degree as an additional way for graduates to earn CCMR credit.

The proposed amendment to §74.1007 would include the two additional CCMR indicators for graduates as required by HB 1147 and HB 1525.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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, §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 Texas Government Code, §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 Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §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 adding two new CCMR Outcomes Bonus indicators to implement the requirements of HB 1147 and HB 1525, 87th Texas Legislature, Regular Session, 2021.

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: Dr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be implementing statute by rewarding districts for their work in furthering the goal set under the state's master plan for higher education developed under TEC, §61.051, for at least 60% of all adults aged 25 to 34 in Texas to achieve a postsecondary degree or workforce credential by 2030. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA 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 October 22, 2021, and ends November 22, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.110(b)(1), (2), and (3), which require the commissioner to determine the threshold percentage for college, career, or military readiness for annual graduates who are educationally disadvantaged, not educationally disadvantaged, and annual graduates who are enrolled in a special education program under TEC, Subchapter A, Chapter 29; TEC, §48.110(c), which requires the commissioner to annually determine the minimum number of annual graduates in each cohort as described in subsection (b) who would have to demonstrate college, career, or military readiness as described in Subsection (f) in order for the district to achieve a percentage of college, career, or military readiness for that cohort equal to the threshold percentage established for that cohort under subsection (b); TEC, §48.110(f)(1)(A), as amended by House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to establish by rule the time period by which an annual graduate must enroll at a postsecondary educational institution or earn an associate degree in order to demonstrate college readiness; TEC, §48.110(f)(1)(B), as added by HB 1525, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to establish by rule the time period by which an annual graduate must earn an associate degree from a postsecondary educational institution in order to demonstrate college readiness; TEC, §48.110(f)(2)(B), which requires the commissioner to establish by rule the time period by which an annual graduate must earn an industry-accepted certification in order to demonstrate career readiness; TEC, §48.110(f)(3)(B), as amended by HB 1147, 87th Texas Legislature, Regular Session, 2021, which requires the commissioner to establish by rule the time period by which an annual graduate must enlist in the armed forces of the United States or the Texas National Guard in order to demonstrate military readiness; and TEC, §48.110(g), which requires the commissioner to establish threshold percentages under Subsection (b) using the 25th percentile of statewide college, career, or military readiness as described in Subsection (f) for the cohort of annual graduates during the 2016-2017 school year.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.110.

§74.1007. *College, Career, or Military Readiness Outcomes Bonus.*

(a) The standards and thresholds established by the commissioner of education under Texas Education Code (TEC), §48.110(b)(1)-(3); (c); (f)(1)(A) and (B), (2)(A) and (B), and (3)(A) and (B); and (g), shall be used to calculate annual college, career, or military readiness outcomes bonuses for school districts and open-enrollment charter schools.

(b) The threshold percentages of annual graduates who demonstrate college, career, or military readiness as provided in subsection (c) of this section for each of the following cohorts are as follows:

- (1) 11% of annual graduates who are educationally disadvantaged;
- (2) 24% of annual graduates who are not educationally disadvantaged; and
- (3) 0% of annual graduates who are enrolled in a special education program under TEC, Chapter 29, Subchapter A, regardless of whether the annual graduates are educationally disadvantaged.

(c) An annual graduate demonstrates:

- (1) college readiness if the annual graduate:

(A) both:

(i) ~~[(A)]~~ achieves college readiness standards used for accountability purposes under TEC, Chapter 39, on the ACT, the SAT, or an assessment instrument designated by the Texas Higher Education Coordinating Board (THECB) under TEC, §51.334; and

(ii) ~~enrolls at a postsecondary educational institution by the tenth instructional day of the fall semester immediately following high school graduation; or~~

(B) ~~[meets one of the following requirements:]~~

~~[(#)]~~ earns an associate degree by August 31 immediately following high school graduation; ~~or~~

~~[(ii)]~~ enrolls at a postsecondary educational institution by the tenth instructional day of the fall semester immediately following high school graduation;]

(2) career readiness if the annual graduate:

(A) achieves college readiness standards used for accountability purposes under TEC, Chapter 39, on the ACT, the SAT, or an assessment instrument designated by THECB under TEC, §51.334; and

(B) earns an industry-based certification or a level I or level II certificate by August 31 immediately following high school graduation; and

(3) military readiness if the annual graduate enlists in the armed forces of the United States or the Texas National Guard by December 31 immediately following high school graduation.

(d) Each year, the commissioner shall determine for each school district and open-enrollment charter school the minimum number of annual graduates in each cohort described by subsection (b) of this section who would have to demonstrate college, career, or military readiness as described by subsection (c) of this section in order for the district or charter school to achieve a percentage of college, career, or military readiness for that cohort equal to the threshold percentage established for that cohort under subsection (b) of this section. Each year, the number of annual graduates in excess of the threshold percentage for each cohort provided in subsection (b)(1)-(3) of this section will be used to calculate college, career, or military readiness outcomes bonus funding for the applicable fiscal year.

(e) Each June, beginning in June 2021, the Texas Education Agency (TEA) shall supply school districts and open-enrollment charter schools with a preliminary College, Career, or Military Readiness Outcomes Bonus Student Listing that provides the data used by TEA to calculate preliminary funding for the upcoming school year.

(1) Upon release of the preliminary listing, school districts and open-enrollment charter schools have 30 days to file an appeal of student-level data. School districts and open-enrollment charter schools must file an appeal and submit all supporting documentation within 30 days of the release of the preliminary listing.

(2) An appeal must be filed by following the instructions provided with the release of the student listing. The basis for appeals should be a data or calculation error attributable to TEA or a testing contractor.

(3) The appeals process is not a permissible method to correct data that were inaccurately reported to TEA by the school district or open-enrollment charter school. A school district or open-enrollment charter school that submits inaccurate data must follow the procedures and timelines for resubmitting data as specified in the Texas Education

Data Standards. Appeals from school districts and open-enrollment charter schools that missed data resubmission window opportunities will be denied.

(4) Decisions regarding appeals are final and not subject to further appeal.

(5) Due to the delay in data availability for enrollment in institutions of higher education (IHEs), preliminary College, Career, or Military Readiness Outcomes Bonus Student Listings will not include IHE enrollment. For 2019 annual graduates, TEA will use a two-year IHE enrollment average for each school district. Beginning with 2020 annual graduates, TEA will use a three-year IHE enrollment average for each school district.

(6) Each year, upon receipt of IHE enrollment data, TEA will reconcile College, Career, or Military Readiness Outcomes Bonus Student Listings with actual enrollment data for the applicable graduating class. Upon reconciliation, the college, career, or military readiness outcomes bonus funding will be updated for the applicable fiscal year.

(f) Due to discrepancies between annual enlistment counts for Texas military enlistees aged 17-19 released by the United States Department of Defense and Texas Student Data System Public Education Information Management System military enlistment data for 2017 and 2018 annual graduates, TEA will exclude military enlistment data from College, Career, or Military Readiness Outcomes Bonus Student Listings as provided in subsection (e) of this section until such data can be obtained directly from the United States Armed Forces. Upon receipt of such data, previously released final College, Career, or Military Readiness Outcomes Bonus Student Listings will be updated to include military enlistment data. When the final College, Career, or Military Readiness Outcomes Bonus Student Listings are updated, as provided in this subsection, the number of annual graduates in excess of the threshold percentage for each cohort provided in subsection (b)(1)-(3) of this section will be updated and used to recalculate college, career, or military readiness outcomes bonus funding for the 2019-2020 fiscal year and applicable future fiscal years.

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

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The proposed amendment would adopt by reference the *2021-2022 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to §129.1025 would adopt by reference the student attendance accounting handbook for the 2021-2022 school year.

Significant changes to the *2021-2022 Student Attendance Accounting Handbook* would include the following.

Section 1, Overview

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The following changes implement reporting requirements for attendance and funding.

Language would be revised to state that a school district may serve any student in any capacity or setting as long as serving the student does not interfere with the education of funding-eligible students.

Language would be revised to update the statutory authority amended by House Bill 3, 86th Texas Legislature, 2019, from TEC, Chapter 42, to TEC, Chapter 48, throughout the handbook.

Section 2, Audit Requirements

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language would be revised to state that if the district uses a system that is almost entirely functional without the use of paper documents, it must meet the additional standards established in the subsection addressing the Paperless Attendance Accounting Systems or the district must generate and retain paper copies of attendance reports and records.

Language would be revised to exclude the career and technical education (CTE) code from the subsection addressing student detail reports.

Language would be added to state that board-approved local policy that defines the instruction methods (i.e., synchronous,

asynchronous, or a combination of both) should include the official attendance times for synchronous instruction. Additionally, if the board policy indicates approval for asynchronous method, the local educational agency (LEA) must create an asynchronous instructional plan.

Language would be added to state that documentation of a student's instructional schedule, whether synchronous or asynchronous, that includes the minimum amount of instructional time to meet the two-through-four rule

Section 3, General Attendance Requirements

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes would implement reporting requirements for attendance and funding.

Language would be deleted to remove the requirement of charter schools to serve students in the geographic boundary authorized in the charter school's charter agreement.

Language would be revised to state that if a student repeats a course for which the student has already received credit, the time that the student spends taking the course for a subsequent time does not count toward the accumulation of attendance hours for FSP funding purposes unless the course is being repeated due to a student's parent electing for the student to repeat a course from the 2020-2021 school year. This provision will expire on September 1, 2022.

Language would be revised to state that students can generate ADA funding if they are eligible to graduate but continue their education to meet the requirements of a higher high school diploma standard or are enrolled in a TEA-designated Pathways in Technology Early College High School (P-TECH) and coded in TSDS PEIMS (E1612).

Language would be deleted to remove the provision that a charter school may enroll a child of an employee's regardless of geographic boundary.

Language would be revised to provide parents with contact information to apply for a school certificate that can be used for school purposes but is not a legal substitute for a certified copy of a birth certificate.

Language would be added to state that a student may be considered present for FSP purposes if the student is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible. Documentation from a health care professional licensed, certified, or registered to practice in Texas must be provided that specifies the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

Language would be revised to state that a student may be considered present for FSP purposes if the student misses school for the purpose of visiting a driver's license office.

Language would be revised to state that demographic and special program information for all students served in the district should be reported through the TSDS PEIMS Fall submission.

Language would be revised to state that for General Education Homebound (GEH), a student must have a medical condition that is documented by a physician licensed to practice in the United States. Except in cases of medically fragile students, potential medical conditions or concerns that student may develop medical conditions do not constitute grounds for GEH pro-

gram eligibility. In cases where students are medically able to receive more than the required minimum four hours of face-to-face instruction, LEAs must provide additional remote instruction. Please note that concurrent instruction is not allowed.

Language would be revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in GEH programs where medically appropriate. Virtual instruction provided to students in GEH programs could not be provided by a teacher concurrently instructing students in person.

Language would be added to include tutorial time that occurs before or after school in the operational minute calculation. If transportation is provided, the district must ensure that before-and/or after-school transportation options are available to students who wish to participate in the tutorial instruction.

Language would be revised to state that school districts and charter schools that do not, as part of the TSDS PEIMS Summer submission, report their calendars to TEA until after the school year is complete must ensure that they have the required number of minutes/days built into their school board-approved calendars.

Language would be added to note that prior year documentation from the 2019-2020 or 2020-2021 school year may be used in the following manner. If the 2019-2020 school year attendance report is selected, use only the average of the first four six-weeks attendance reporting periods due to the closures during the fifth and sixth six weeks of the 2019-2020 school year. Use the TSDS PEIMS Superintendent's Report of Student Attendance 2019-2020 Summer Collection report (PDM3-130-001). If the 2020-2021 school year attendance report is selected, show the overall average attendance rate for the year for the district or applicable campus.

Language would be revised with reference to time in situational instances shown in the table regarding closure for bad weather or other issue of health and safety. Also, language would be revised in agency policy in the same table.

Language would be revised to state that one program that allows for state funding of school days beyond the 75,600 minutes that make up the state funding year provides extended school year (ESY) services for certain students receiving special education services.

Language would be revised to state that beginning in the 2020-2021 school year, an additional instructional-days incentive became available to district or charter school campuses that offer up to an additional 30 days of half-day instruction for students enrolled in prekindergarten (Pre-K) through Grade 5.

Language would be revised to state that participating campuses receive half-day funding for students attending each additional day and that additional days funding started on September 1, 2020.

Language would be revised to state the Additional Days School Year (ADSY) program allows for additional half-day funding for each school day beyond the 180 days, up to 210 days. Also, language would be revised to show that no public school will be funded in excess of a 180-day calendar except for the schools that meet all the criteria for the additional days incentive funding that became available starting in the 2020-2021 school year.

Language would be revised to state that districts with tracks ending after June 16, 2022, which is the due date for initial TSDS

PEIMS Summer submission, must still submit their initial TSDS PEIMS Summer submissions by that due date. Resubmissions can be delayed; however, resubmissions will not be processed after August 18, 2022.

Section 4, Special Education

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for special education to account for attendance and funding.

Language would be revised to cite 19 TAC §89.1070 in the Special Education section, including the foot notes.

Language would be revised to state that a full individual and initial evaluation must be completed, and the district must meet the requirements in 34 CFR, §300.323 (f)(2), if appropriate, within 30 days of the evaluation report.

Language would be revised to state that, once an admission, review, and dismissal (ARD) committee determines that a student is no longer a child with a disability, the student is dismissed from special education and related services, which also occurs when a parent revokes consent in writing for a student's receipt of special education services.

Language would be revised to state that the ARD committee must provide the effective date of dismissal of special education and related services to the district, and the district must record this date in the attendance accounting system.

Language would be revised to state that to be placed in the special education homebound setting, a student must have a current medical condition that is documented by a physician except in cases of severely immuno-compromised students. The language would clarify that potential medical conditions or concerns that students may develop medical conditions would not constitute grounds for special education homebound program eligibility.

Language would be revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in special education homebound programs where medically appropriate and to the extent that such instruction is consistent with students' individualized education programs (IEPs). Virtual instruction provided to students in special education homebound programs could not be provided by a teacher concurrently instructing students in person.

Language would be added to show that a student who is not eligible for Pre-K may be served in the Pre-K classroom if the ARD committee determines that this is the appropriate setting based on the student's IEP.

Language would be revised in the coding chart to state that ineligible Pre-K students may be served in the Pre-K classroom if the ARD committee deems it appropriate and space is available. However, eligible Pre-K students should not be denied enrollment due to an ineligible Pre-K student's enrollment.

Language would be revised to state that as a result of Senate Bill (SB) 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "limited English proficient (LEP) student" used in TEC, Chapter 29, Subchapter B. This also resulted in a change to the term "English learner (EL)" used in 19 TAC Chapter 89, Subchapter B. These terms describe the same group of Texas students. An emergent

bilingual student is in the process of acquiring English and has another language as the student's primary or home language. As PEIMS is revised to reflect these changes, the terms "emergent bilingual (EB)" and "English learner (EL)" may be bridged as EB/EL, and the data element names may still indicate the use of LEP during the transition. It is important to note that "English learner" is still used in federal regulations and guidance.

Section 5, Career and Technical Education (CTE)

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following change would implement reporting for CTE to account for attendance and funding.

Language would be deleted to remove eligibility of a district to remove funding in the amount of \$50 for students enrolled in two or more CTE courses.

Language would be revised regarding computing contact hours for CTE weighted funding and the tiers.

Section 6, Bilingual/English as a Second Language (ESL)

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes would implement reporting for bilingual and special language programs to account for attendance and funding.

Language would be revised to state that when parents indicate the use of more than one language in response to question 1 and/or question 2 of the home language survey, it is the district's responsibility to contact the parent to determine which language is used most of the time.

Language would be revised to state that if a language other than English is indicated on any of the required questions on the survey, the district must assess the student for English language proficiency.

Language would be deleted to remove the term "limited English proficiency."

Language would be added to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "LEP student" used in TEC, Chapter 29, Subchapter B. See the previous description of changes to Section 4 for an explanation of these changes.

Language would be revised to state that the date of the student's enrollment from another Texas public school is the start date for continued program services if the student has been previously identified and served in Texas.

Language would be revised to provide the link where the appropriate codes are available.

Language would be revised to state that to be eligible for participation in the bilingual or English as a second language (ESL) education program, a student must meet the requirements that are listed.

Language would be revised to show students who may participate in a district's bilingual or ESL education program but are

not eligible for bilingual education allotment (BEA) funding. This includes students participating or continuing in a one-way dual language immersion, transitional bilingual education, or an ESL program.

The section would be revised to include a fact sheet with information on weighted BEA funding.

Language would be revised to state that English learners served through an alternative language program generate BEA funds.

Language would be added to include Program Model Fact Sheet and Certification Fact Sheet under teacher certification requirements.

Language would be revised to revise to state the language proficiency assessment committee (LPAC) will determine if a student can be classified as English proficient and has demonstrated readiness to participate equitably in grade level instruction.

Language would be revised to state that the LPAC may recommend that an English proficient student continue in the dual language immersion program with parental approval.

Language would be revised to state that as PEIMS is revised to reflect changes as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the data element names may still use LEP or EL during the transition.

Language would be revised to state that once a reclassified student has completed all four years of state and federal monitoring, he or she will be coded as Former Limited English Proficient/English Learner, code 5 in the Limited English Proficient/English Learner indicator for the duration of his or her schooling in Texas.

Language would be revised to provide the link for the English Learning Portal that gives additional resources for program implementation.

Language would be revised to provide the link to access additional resources for program implementation.

Section 7, Prekindergarten (Pre-K)

TEC, Chapter 29, Subchapter E, establishes special general parameters for Pre-K programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for pre-K to account for attendance and funding.

Language would be revised to include eligibility for students in foster care in another state or territory who now reside in Texas.

Language would be revised to state that a student is eligible for Pre-K if the student was eligible to enroll in Pre-K but did not attend during the previous school year under TEC, §29.153 (b), and the child has not yet enrolled in kindergarten or if the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124.

Language would be revised to state that a child's parent or guardian can elect for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC §29.153(b), and the child has not yet enrolled in kindergarten.

Language would be revised to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaced the term "LEP student" used in

TEC, Chapter 29, Subchapter B. The term "English learner (EL)," as used in 19 TAC Chapter 89, Subchapter BB, changes as well. See the previous description of changes in Section 4 for an explanation of these changes.

Language would be revised to show that the home language survey will question what language is used in the child's home.

Language would be revised to state that a child who is a member of a household receiving benefits from the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families program, State Medicaid program, or Food Distribution Program on Indian Reservations is eligible for the National School Lunch Program.

Language would be revised to state that students who are in or who have ever been in the conservatorship of the Texas Department of Family Protective Services (DFPS) (that is, in foster care) following an adversary hearing or were in foster care in another state or territory but now reside in Texas are eligible for free Pre-K.

Language would be revised to state that if an individual has a Pre-K-age child and has been nominated but not notified as an honoree prior to the current school year, that individual may request that the Early Childhood Education Division determine eligibility based on the nomination submitted for review to the Criminal Justice Division.

Language would be revised to state that proof is required to ensure a student is three or four years old as of September 1 of the school year unless the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC, §29.153(b), and has not yet enrolled in kindergarten.

Language would be revised to state that Pre-K classes for eligible students four years old and older must operate on a full-day basis unless the district has applied for and received a waiver. Pre-K classes for eligible three-year-old children and ineligible three- and four-year-old children may be operated as a half-day program.

Language would be revised in the Eligible Days Present and ADA Eligibility table to show Early Childhood Special Education Services (ECSE) served in Pre-K classroom.

Section 8, Gifted/Talented

TEC, Chapter 29, Subchapter A, establishes parameters for non-traditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes would implement reporting for gifted/talented to account for attendance and funding.

Language would be added to state that districts must code a furloughed student who is taking leave from receiving services through a state-approved gifted/talented program with a gifted/talented indicator code of 0 in the Student Detail Report.

Section 10, Alternative Education Programs (AEPs) and Disciplinary Removals

TEC, §37.008, establishes the general parameters for disciplinary alternative education programs, including placement of students in alternative settings. The following changes implement reporting for alternative settings.

Language would be revised to show mandatory expulsion in the disciplinary removals and programs table.

Section 11, Nontraditional Programs

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language would be revised to state that students are sometimes educated during nontraditional hours or days of the week or in nontraditional programs within the district, such as in optional flexible school day programs (OFSDPs), or off-campus by providers other than the district, such as colleges or universities.

Language would be revised to state that districts must not use the AP trademark or AP PEIMS Code (service IDs) unless an audit has been performed.

Language would be revised to state that districts must not use the IB trademark or IB PEIMS Code (service IDs) unless authorized by the International Baccalaureate Organization.

Language would be revised to state that the Texas Higher Education Coordinating Board shall develop and implement a pilot program under which a licensed hospital may offer dual credit courses to high school students enrolled in a school district in partnership with the district.

Language would be revised to state that students must meet requirements for one of the listed assessments to meet Texas Success Initiative Assessment criteria, and requirements to qualify for English courses and revisions would be made in the chart showing student eligibility for dual credit courses.

Language would be deleted in a requirement for student eligibility to enroll in dual courses with regards to content area of the course and an exemption limited to an institution of higher education partnering with the school district.

Language would be deleted to remove the funding of Optional Extended Year Program for the 2021-2022 school year.

Language would be added to elaborate on ADSY, ADSY program design, ADSY reporting and funding, and additional ADSY information.

Section 12, Virtual, Remote, and Electronic Instruction

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN from the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following change would implement reporting for the TXVSN to account for attendance and funding.

Language would be revised to state that the state virtual school network includes the TXVSN catalog of supplemental online courses for Grades 9 through 12. Courses first became available through the TXVSN course catalog in January 2009 and may be provided through the TXVSN course catalog by a TXVSN course provider.

Language would be revised to include eligibility criteria for a student's full-time enrollment in TXVSN courses and state that these courses are offered through the TXVSN course catalog.

Language would be added to state that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN Online School (OLS) program is considered to be enrolled in a TXVSN course or OLS program when he or she begins receiving instruction and actively engages in instructional activities in a TXVSN subject area or course.

Language would be added to show that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN OLS program is considered to be, and must be reported as, withdrawn from the TXVSN course or OLS program when the student is no longer actively participating in the TXVSN course or program.

Language would be revised to state that the section on remote instruction that is not delivered through the TXVSN will describe procedures for submitting requests for waivers of those rules and policies and information on how the agency will evaluate those requests.

Language would be revised to include that remote instruction not delivered through TXVSN cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language would be revised to state that remote conferencing means remote instruction in which a student at an off-campus location is able to virtually participate in classes provided by a teacher on the student's campus.

Language would be revised to state that remote conferencing students will receive funding provided that certain requirements are met, such as the total amount of remote conferencing instruction must not exceed more than 20 instructional days over the entirety of the school year.

Language would be further revised to state that in addition to other conditions, documentation from a physician must include a statement that the student is to remain confined to their home or to a hospital; the student has a positive test result for a communicable condition listed in 25 TAC §97.7; or the student has been identified as having been in close contact with COVID-19.

Language would be revised to state that if the documented temporary medical condition persists longer than 20 instructional days over the entirety of the school year or a 504 committee determines that remote instruction is needed for more than 20 days, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. An example is provided of a child being in close contact with COVID-19 more than twice over the course of the year, and the family opted to follow the stay-at-home recommendations each time.

Language would be revised to state that remote conferencing would generate attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day and students in Grades 6 through 12 receive at least four hours of instruction through synchronous instruction each school day. The instruction does not need to be consecutive.

Language would be revised to state that for students participating through remote conferencing, instruction must be provided synchronously, which means two-way, real-time/live virtual in-

struction between teachers and students. The instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language would be revised to state that, in submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, districts must state how program requirements will be satisfied to claim weighted funding.

Language would be revised to state that for remote conferencing special education students, the instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language would be revised to state that to receive funding for remote conferencing special education students, the student's ARD committee must have determined, in a manner consistent with state and federal law, that the remote instruction to be provided is required for the provision of a free and appropriate public education (FAPE). A placement change for a student served by special education requires the ARD committee to meet to address the change in placement and document it in the student's IEP, generally within 10 school days.

Language would be revised to state that if the ARD committee determines that remote conferencing should be needed for longer than 20 instructional days over the entirety of the school year, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. Waivers will be granted on a case-by-case basis and a waiver will not be granted if the student is unable to attend school for a reason other than a medical condition, such as confinement at home for disciplinary reasons. Any waiver request must include an explanation of the circumstances giving rise to the waiver request.

Language would be revised to state that special education students participating by remote conferencing will generate attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day. Students in Grades 6 through 12 must receive at least four hours of instruction through synchronous instruction each school day in order to generate attendance. This instruction does not need to be consecutive.

Language would be revised to state that for remote conferencing special education, both on-campus instructional time and remote conferencing instructional time can be included when calculating two-through-four-hour rule eligibility provided the remote instruction is provided synchronously, which means two-way, real-time/live virtual instruction between teachers and students, not concurrent instruction.

Language would be added to state that a student served through remote conferencing may be eligible to generate weighted funding for programs such as CTE or bilingual/ESL education, provided that requirements for the applicable program(s) are met. In submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, an explanation must be provided as to how program requirements will be satisfied in order to claim weighted funding.

Language would be revised to state that for remote homebound instruction for regular education students and special education students, waivers will only be granted in extremely severe med-

ical circumstances, and a waiver must be submitted for each individual student.

Language would be revised to state that CTE courses provided on campus and self-paced computer courses may be considered for contact hours provided all conditions are met.

Language would be revised to state that the requirement that a teacher be appropriately qualified/certified does not apply to an open-enrollment charter school unless the school's charter states that a CTE course must be taught by a qualified/certified CTE or technology applications teacher.

Language would be revised regarding information on CTE weights and the use of multipliers.

Language would be revised regarding weights for the gifted/talented category of students.

Language would be added to elaborate on methods of virtual instruction, students' eligibility for ADA funding, eligibility based on current school year, limits on total remote participation ADA, attendance taking and minutes requirement, remote synchronous instructions, and remote asynchronous instruction.

Glossary

Language would be deleted from the glossary regarding at-risk students, and language would be added to include criteria to meet the at-risk student's classification.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that the proposed changes to the *2021-2022 Student Attendance Accounting Handbook* would have no additional costs to local government. However, there would be additional costs to state government. Modifications to existing Section 12.3.1 would allow for students to participate in remote conferencing without a waiver for up to 20 instructional days over the course of the entire school year. Assuming 55,136 students, representing one percent of all students, would take advantage of these provisions in the 2021-2022 school year, and further assuming an average number of 15 remote conferencing instructional days for those students, and further assuming these provisions would result in a one percentage point increase in average attendance rates for those students on those remote conferencing days, TEA estimates an annual fiscal impact to the FSP of \$422,066, totaling \$2,110,330 through the 2025-2026 school year.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §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 Texas Government Code, §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 Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §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 and limit an existing regulation. The proposed changes to the *2021-2022 Student Attendance Accounting Handbook* would amend requirements and provide clarity regarding student attendance accounting procedures. In some instances, the proposed changes would add information, and in some instances, information would be removed.

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 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: Mr. Lopez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be continuing to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA 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 October 22, 2021, and ends November 22, 2021. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087,

as amended by Senate Bill (SB) 289 and House Bill (HB) 699, 87th Texas Legislature, Regular Session, 2021, which provides purposes for which a school district shall excuse a student from attending school, including excusing a high school student 15 years of age or older for the purpose of visiting a driver's license office to obtain a driver's license or a learning permit; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as amended by SB 15, 87th Texas Legislature, Second Called Session, 2021, and SB 1615, SB 1697, and HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in a bilingual education or special

language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC §48.109, as added by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; and TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081; 25.0812; 25.087, as amended by Senate Bill (SB) 289 and House Bill (HB) 699, 87th Texas Legislature, Regular Session, 2021; 29.0822; 30A.153; 48.004; 48.005, as amended by SB 15, 87th Texas Legislature, Second Called Session, 2021, and SB 1615, SB 1697, and HB 1525, 87th Texas Legislature, Regular Session, 2021; 48.102; 48.103; 48.104, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021; 48.105, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021; 48.106, as amended by HB 1525, 87th Texas

Legislature, Regular Session, 2021; 48.108, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021; 48.109, as added by HB 1525, 87th Texas Legislature, Regular Session, 2021; and 48.270.

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2020-2021 are described in the official Texas Education Agency (TEA) publication *2021-2022 [2020-2021] Student Attendance Accounting Handbook*, dated October 2021 [August 2020], which is adopted by this reference as the agency's official rule. A copy of the *2021-2022 [2020-2021] Student Attendance Accounting Handbook*, dated October 2021 [August 2020], is available on the TEA website with information related to financial compliance. [for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website.] The commissioner will amend the *2021-2022 [2020-2021] Student Attendance Accounting Handbook*, dated October 2021 [August 2020], and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

Texas Education Agency

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For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

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 general certification requirements. The proposed amendment would update the list of countries that permit individuals who have obtained the equivalent of a United States bachelor's or master's degree to be exempt from the Test of English as a Foreign Language internet-Based Test (TOEFL iBT) to demonstrate English language proficiency; would clarify that individuals who have already demonstrated English language proficiency to receive an SBEC-issued Texas certificate would not have to demonstrate English language proficiency again for purposes of admission into an educator preparation program (EPP) to obtain an additional Texas educator certificate; and would provide technical and grammatical edits.

BACKGROUND INFORMATION AND JUSTIFICATION: At the August 2017 SBEC meeting, the SBEC adopted changes to 19 TAC Chapter 230 to remove the provision that required candidates to demonstrate English language proficiency by providing evidence that the primary language of instruction at an institution of higher education that the candidate attended outside of the United States was English. The SBEC adopted a list of countries in which English is the official language and allowed candidates from these countries to be exempt from the requirement to take the TOEFL iBT. The SBEC derived its list of English-speaking countries from the lists the colleges and universities of the University of Texas and Texas A&M University systems use to determine exemptions from English language proficiency requirements for student admissions.

At the July 2021 SBEC meeting, the SBEC directed Texas Education Agency (TEA) staff to draft amendments to 19 TAC Chapter 230 to update the list of qualifying countries to include any new additions to the lists used by the colleges and universities of the University of Texas and Texas A&M University systems.

Following is a description of the proposed amendment that would add the additional countries to the approved list as outlined in Figure: 19 TAC §230.11(b)(5)(C).

§230.11. General Provisions.

The proposed amendment would update Figure: 19 TAC §230.11(b)(5)(C) to add, "Federated States of Micronesia," "India," "Ireland," "New Zealand," and "Singapore" to the list of qualifying countries where English is the primary or predominant language. These are countries that the colleges and universities of the University of Texas and Texas A&M University systems have identified as English-speaking for the purposes of determining exemptions to English language proficiency requirements. This proposed amendment would permit individuals who have obtained the equivalent of a United States bachelor's or master's degree from colleges or universities in the Federated States of Micronesia, India, Ireland, New Zealand, and Singapore to be exempt from the English language proficiency requirement for educator certification. The proposed amendment to Figure: 19 TAC §230.11(b)(5)(C) would also provide grammatical and technical edits to the list of countries to properly place "Canada" and the "Cayman Islands" alphabetically and to add "Islands" to Turks and Caicos.

Proposed new 19 TAC §230.11(c) would clarify that individuals who have previously demonstrated English language proficiency to receive an SBEC-issued certificate would not be required to demonstrate English language proficiency again if they seek admission into an approved Texas EPP at a later time to pursue an additional area of certification. This would prevent redundant, inefficient, and unnecessary paperwork for both educators and TEA staff.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and there are no additional costs to entities required to comply with the proposal. The state and entities deemed as local government do not pay for or receive any funds from administration of the English language proficiency examination requirement (i.e., TOEFL iBT) in rule for issuance of Texas certification.

The TEA staff has determined, however, that the proposal would create an anticipated economic benefit for individuals. The TEA estimates that the proposal will cause a cost savings of \$2,350 per fiscal year for each of the next five fiscal years (FYs), FYs 2022-2027, for individuals who will not be required to take the TOEFL iBT test to demonstrate English language proficiency. TOEFL iBT test fees vary in cost, but TEA staff is using \$235 (the fee to test in several Texas cities as that is often the location where these candidates for certification will test) to calculate the anticipated savings to individuals. TEA staff estimates that approximately five individuals per year will apply from the five new countries that the proposal would add to the SBEC-approved list of English-speaking countries, and that when multiplied by the \$235 test fee, the result is a cost savings of \$1,175 per fiscal year. Additionally, TEA staff anticipates a minimum of five individuals who have already demonstrated English language proficiency would return to a Texas-approved EPP to seek an additional certification per fiscal year. For these five returning candidates, the cost savings would be \$1,175 per fiscal year when multiplied by the \$235 test fee. In total, the estimated cost savings per fiscal year would be \$2,350.

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: The 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 limit an existing regulation by adding countries to the list that individuals from those countries would no longer be required to take and pass an English language proficiency examination for Texas certification and by allowing individuals who have previously proven their English proficiency to attain a Texas certification to be exempt from having to prove it again when they seek another Texas certification.

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 reg-

ulation; would not 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: The public benefit anticipated as a result of the proposal would be ensuring that educator certification applicants demonstrate the level of English language proficiency needed to instruct and to support all learners and to communicate effectively with parents, colleagues, and other stakeholders upon certification, while avoiding unnecessarily burdensome testing and paperwork for applicants who are from English-speaking countries or have already proven their English proficiency to attain a prior Texas educator certificate. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The 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 October 22, 2021, and ends November 22, 2021. 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 at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021.

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 the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the 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), 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(b)(4), which requires the SBEC to propose rules that 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 specify the requirements 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), (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

(B) verification of 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) [if] 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.

Figure: 19 TAC §230.11(b)(5)(C)

[Figure: 19 TAC §230.11(b)(5)(C)]

(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 [Certificate]), 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 October 11, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 475-1497



CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §234.3, §234.5

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §234.3 and §234.5, concerning military service members, military spouses, and military veterans. The proposed amendments would implement House Bill (HB) 139, 87th Texas Legislature, Regular Session, 2021. The proposed amendments would add the space force to the list of branches of the United States Armed Forces and would allow service members, spouses, and veterans to get credit toward educator certification requirements for clinical and professional experience.

BACKGROUND INFORMATION AND JUSTIFICATION: All military-related provisions for educator certification have been consolidated into 19 TAC Chapter 234. The proposed amendments to 19 TAC Chapter 234 would implement HB 139, 87th Texas Legislature, Regular Session, 2021. Following is a description of the proposed amendments.

§234.3. Definitions.

The proposed amendment to §234.3(5) would implement HB 139, 87th Texas Legislature, Regular Session, 2021, by adding "space force" to update the list of branches of the United States Armed Forces.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

The proposed amendment to §234.5(f) would implement HB 139, 87th Texas Legislature, Regular Session, 2021, by adding "clinical and professional experience" training to the list of appropriate credit toward certification requirements. HB 139 allows state licensing agencies to give military service members, spouses, and veterans credit toward certification requirements for clinical and professional experience.

The proposed amendment would also include a technical edit to further define a cross reference to 19 TAC §152.1001 in §234.5(h).

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect,

there is no additional fiscal impact on state or 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: The 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 increase the number of individuals subject to the rule's applicability because it adds individuals in the space force branch of the United States Armed Forces as military community members and adds military service members, veterans, and spouses who have clinical and professional experience to those persons eligible for credit toward certification requirements.

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 expand, limit, or repeal an existing regulation; would not 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: The public benefit anticipated as a result of the proposal would be continued support to members of the military community who seek to become educators in Texas. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The 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 October 22, 2021, and ends November 22, 2021. 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 at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act

must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), as amended by HB 159, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.052(b-1), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to establish procedures to accurately identify military spouses and expedite processing of certification applications that they submit; TEC, §21.052(c), which specifies the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active-duty service members; TEC, §21.052(f), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which provides definitions for terms used in the rest of TEC, §21.052; TEC, §21.052(i), as added by HB 139, 87th Texas Legislature, Regular Session, 2021, which defines active-duty service, lists the branches of the United States Armed Forces, and confirms the members of the military community eligible for processes established to certify educators from outside the state; Texas Occupations Code (TOC), §55.001, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires state agencies to adopt rules for issuance of licensure to members of the military community and provides alternatives to become eligible for licensure; TOC, §55.0041, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, which requires state agencies to adopt rules to allow military spouses licensed in other states and in good standing to practice in their occupation of expertise with the license issued in another state; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of

the military community; and TOC, §55.010, which requires state agencies to prominently post notification of licensure provisions for military service members, military veterans, and military spouses on the home page of the agency's website.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.041(b)(2) and (4); 21.044(a), as amended by House Bill (HB) 159, 87th Texas Legislature, Regular Session, 2021; and 21.052(b-1), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, (c), (d-1), (f), as amended by HB 139, 87th Texas Legislature, Regular Session, 2021, and (i), as added by HB 139, 87th Texas Legislature, Regular Session, 2021; and Texas Occupations Code, §55.001, as amended by HB 139, 87th Texas Legislature, Regular Session, 2021; 55.002; 55.003; 55.004, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021, 55.0041, as amended and added by HB 139, 87th Texas Legislature, Regular Session, 2021; and 55.005-55.010.

§234.3. *Definitions.*

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

- (1) Military service member--A person who is on active duty.
- (2) Military spouse--A person who is married to a military service member.
- (3) Military veteran--A person who has served on active duty and who was discharged or released from active duty.
- (4) Active duty--Current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by the Texas Government Code, §437.001, or similar military service of another state.
- (5) Armed forces of the United States--The army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

§234.5. *Certification of Military Service Members, Military Spouses, and Military Veterans.*

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed as soon as practicable.

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify, in writing or by email, a military spouse of the requirements for obtaining a standard Texas certificate.

(c) A military spouse who has been issued a one-year certificate prior to September 1, 2017, under the provisions of this chapter, is eligible for two additional years from the date of issuance, not to exceed a total of three years maximum, to align with provisions for a military spouse referenced in subsection (d) of this section.

(d) Effective September 1, 2017, a military spouse shall be issued a three-year temporary certificate upon completion of the review of credentials.

(e) Effective December 1, 2019, prior to beginning employment, a military spouse must declare his or her intent to teach in Texas with a license issued by another state department of education, by submitting an application and required documents for a review of credentials to the TEA and completing the criminal background check. TEA

staff must provide approval for the military spouse to teach in Texas a maximum of three years with credentials issued by another state.

(f) A military service member or a military veteran shall be entitled to credit verified military service, training, clinical and professional experience, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(g) A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(h) A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7, or qualify for an exemption from required Texas examinations through provisions in §152.1001 of Part 2 of this title (relating to Exceptions to Examination Requirements for Individuals Certified Outside the State).

(i) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(j) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(k) Military spouses are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, three-year temporary certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

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 October 11, 2021.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 475-1497



CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§249.15, 249.17, and 249.42, concerning disciplinary proceedings, sanctions, and contested cases. The proposed amendments would implement House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, by amending the SBEC's rules to allow the SBEC to put conditions on a certificate without any additional sanction; to reduce the minimum sanction for contract abandonment that occurs 30-44 days in advance of the first day of instruction for the next school year; to clarify that sanctions for contract abandonment are subject to all mitigating factors and that mitigating factors can reduce a sanction to the point that the SBEC takes no disciplinary action against an educator; and to clarify the notice that the Texas Education Agency (TEA) sends sanctioned educators regarding the necessity of filing a motion for rehearing if the respondent wants to appeal the decision. The proposed amendments also reflect the results of the SBEC's July work session on contract abandonment and October meeting by expanding the definition of good cause for contract abandonment to include instances when an educator resigns after receiving written permission from school administration and by adding new mitigating factors that allow lower sanctions for contract abandonment when an educator gets a promotion, is assigned to another campus, has their salary reduced, or faces a threat of immediate physical harm.

BACKGROUND INFORMATION AND JUSTIFICATION: Chapter 249 covers educator discipline, including investigations, sanction guidelines, and procedures for contested cases. Texas Education Code (TEC), §§21.105, 21.160, and 21.210, give educators the right to resign without penalty at the end of a school year, up to 45 days before the first day of instruction for the following school year. Contract abandonment occurs when an educator resigns from a teaching contract less than 45 days before the first day of instruction for the following school year. The SBEC engaged in discussions during the July 22, 2021 work session and July 23, 2021 SBEC meeting regarding contract abandonment rules and procedures. Proposed rule changes would implement the results of those discussions and recent legislation regarding contract abandonment.

House Bill 2519

HB 2519, 87th Texas Legislature, Regular Session, 2021, created new requirements and limitations for the SBEC in educator discipline cases involving either contract abandonment or a suspension sanction.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e), to state that the SBEC in considering contract abandonment cases "may consider alternatives to sanctions, including additional continuing education or training." The SBEC has historically interpreted "additional" in 19 TAC §249.15(a)(5) to mean that the SBEC had to impose another sanction, such as a non-inscribed reprimand, before it could put other conditions or restrictions on a certificate, such as requiring continuing education. To allow the SBEC to require training without having to issue any other sanction in accordance with the intent of HB 2519, the proposed amendment would remove the word "additional" from 19 TAC §249.15(a)(5).

Through changes to TEC, §§21.105, 21.160, and 21.210, HB 2519 forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts 30 days or more before the first day of instruction for the next school year. The proposed amendment would therefore change the sanction guidance for contract abandon-

ment in 19 TAC §249.17(d)(3) to make an inscribed reprimand the standard sanction when an educator abandons a contract 30-44 days prior to the first day of instruction and no mitigating factors apply. HB 2519 made no changes to the deadline for educator resignations; an educator can still resign without penalty 45 days prior to the first day of instruction. Thus, under the proposed rule, an educator who resigns 45 days prior to the first day of instruction is not subject to sanction by the SBEC, an educator who resigns 44-30 days prior to the first day of instruction is subject to an inscribed reprimand if no mitigating factors apply, and an educator who resigns fewer than 30 days before the first day of instruction or at any point during the school year is subject to at least a one-year suspension if no mitigating factors apply. In a case where the educator resigned 44-30 days prior to the first day of instruction and mitigating factors applied, under the proposed rule, the educator would receive a sanction of less than an inscribed reprimand--a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all--depending on the strength of the mitigating factors and at the SBEC's discretion. Similarly, in a case where the educator resigns fewer than 30 days prior to the first day of instruction or during the school year and mitigating factors apply, under the proposed rule, the educator would receive a sanction of less than a one-year suspension--a shorter suspension, an inscribed reprimand, a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all--depending on the strength of the mitigating factors and at the SBEC's discretion. In any case where the educator had good cause for contract abandonment as defined in 19 TAC §249.17(d)(1), the educator would not be subject to sanction by the SBEC regardless of when the educator resigned.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e) to require that the SBEC consider "any mitigating factors relevant to the teacher's conduct" prior to imposing a sanction for contract abandonment. The proposed amendment to 19 TAC §249.17(d)(2) would change "may" to "shall" to reflect this new statutory requirement by removing the SBEC's discretion on whether to review mitigating factors in contract abandonment cases. The proposed amendment to 19 TAC §249.17(d)(2) would also include technical edits that would add "the educator" as a lead in and would make corresponding technical edits to subparagraphs (A)-(F). The proposed amendment to 19 TAC §249.17(d)(3) would add new §249.17(d)(3)(A) and (B) to include specific cross-references to the factors the SBEC considers under 19 TAC §249.17(c), among which would include a broad catch-all factor, "any other relevant circumstances or facts," to make it clear that the SBEC will consider all mitigating factors in contract abandonment cases.

The proposed amendment to 19 TAC §249.17(d)(3)(B) would also provide a technical edit to reorganize subparagraphs (A)-(C) to clauses (i)-(iii).

The proposed amendment would also include new 19 TAC §249.17(d)(3)(C), which would clarify that mitigating factors can reduce an educator's sanction to such an extent that the SBEC takes no disciplinary action against the educator. This change is proposed to reduce confusion among SBEC members and stakeholders regarding the limits of the SBEC's discretion in considering mitigating factors. The SBEC cannot be arbitrary or capricious in determining the value of a mitigating factor or a sanction, but the SBEC can decide that the unique mitigating facts in a specific case are so extreme and compelling that they necessitate reducing the educator's sanction to the point that an educator subject to discipline receives no sanction.

In TEC, §21.065(b), HB 2519 imposes requirements on the SBEC to give notice to an educator whose certificate has been suspended of "the basis for the suspension" and "information regarding the method in which the teacher may respond to the suspension." The SBEC already sends sanctioned educators such notices with the final order, informing the educators that they must file a Motion for Rehearing with the SBEC if they do not agree with the SBEC's decision and if they want to appeal in keeping with Texas Government Code (TGC), §2001.145. The proposed amendment would add language to 19 TAC §249.42(a) that would reflect and clarify this procedure and the language used in the letters to educators.

This proposal would include technical edits to further define a cross reference to 19 TAC Chapter 101 in §249.15(b)(8).

SBEC Work Session and Board Meeting

On July 22, 2021, the SBEC conducted a work session to examine ways to improve its contract abandonment sanctioning guidelines. The results of the work session and July 23 and October 1, 2021 SBEC meetings are reflected in the proposed amendment to 19 TAC §249.17(d)(1) and (2), which adds to the definition of good cause for contract abandonment and to the mitigating factors that apply specifically to contract abandonment cases. These provisions offer guidance and predictability to educators, TEA staff, State Office of Administrative Hearings judges, and the SBEC regarding in what situations the SBEC will take no action against an educator due to good cause and in what situations the SBEC will issue reduced sanctions against an educator for contract abandonment based on applicable mitigating factors.

The proposed amendment to 19 TAC §249.17(d)(1) would expand the definition of good cause for contract abandonment. Proposed new §249.17(d)(1)(D) would make written permission from school district administration good cause for contract abandonment. The proposed amendment would cause the SBEC to take no disciplinary action against an educator who abandoned a contract under those specific conditions because an educator should be able to resign without penalty when the educator reasonably understands that he or she has received written permission from the school administration to resign.

The proposed amendment to 19 TAC §249.17(d)(2) would add mitigating factors that reduce an educator's sanction for contract abandonment. Proposed new §249.17(d)(2)(G) would reduce an educator's sanction if the educator had resigned in order to take a position that amounted to a career change from one certification class to another or to a more advanced position within the principal certificate class. For example, the proposed amendment would reduce the sanction for an educator who resigned in order to become a librarian, a counselor, an assistant principal, a principal, or a superintendent. The proposed amendment also would reduce the sanction for an assistant principal who resigned to become a principal, a superintendent, or another more senior administration position that requires a principal or superintendent certificate. This proposed amendment would give teachers more flexibility to advance their careers within education without fear of long suspension sanctions from SBEC due to contract abandonment.

Proposed new 19 TAC §249.17(d)(2)(H) would allow a reduced sanction when an educator resigns due to a decrease in the educator's base pay, excluding stipends, as compared to the prior year at the same school district. Due to school district board meeting schedules, some educators do not learn what

their salary will be for the school year until after the 45th day before the first day of instruction, when educators can no longer resign without penalty. The commissioner of education has held that an educator's contract remains valid even if the educator's salary is set at a later school district board meeting, so long as the educator's final salary is within the salary range that the educator was offered when the educator signed the contract. An educator can thus find themselves in a year-long contract for a salary that is less than the educator had earned the year before and be unable to resign without penalty. Under proposed new 19 TAC §249.17(d)(2)(H), an educator who resigned in such circumstances would still be subject to discipline for contract abandonment but would receive a lesser sanction than the default one-year suspension.

Proposed new 19 TAC §249.17(d)(2)(I) would allow a reduced contract abandonment sanction when an educator resigns following a change in the educator's campus assignment that causes a significant adverse impact on the educator's family needs or health condition. In geographically large school districts, a change in campus assignment can cause an educator to have a commute that is much longer than the educator had expected, which can cause the educator to be unable to pick up his or her children on time or can adversely affect the educator's health. This proposed change would give educators confronted with a change in campus assignment and contemplating resignation some predictability that the SBEC will reduce the penalty for contract abandonment to reflect the severity of the impact the change in assignment had on the educator's health or family needs.

Proposed new 19 TAC §249.17(d)(2)(J) would allow lower sanctions for contract abandonment when an educator resigns a contract due to working conditions that reasonably posed an immediate threat of physical harm to the educator. This proposed change would allow the SBEC to reduce the penalty in a contract abandonment case to reflect the severity of the risk of physical harm an educator faced before resigning. It would give educators some comfort and predictability that they would not face a long suspension for contract abandonment if they resign due to physically dangerous working conditions.

While TEA staff may make sanction recommendations, the SBEC would retain discretion to determine the final sanction and the amount of reduction in penalty allowed for each mitigating factor prescribed in 19 TAC §249.17(d)(2).

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or 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 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: The 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 limit an existing regulation by reducing the minimum sanction for contract abandonment 30 days prior to the first day of instruction when no mitigating factors apply from a one-year suspension to an inscribed reprimand. It would further limit an existing regulation by creating more mitigating factors and ways that a respondent can meet the definition of good cause, reducing the number of respondents who will be subject to sanction.

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 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: The public benefit anticipated as a result of the proposal would be predictability and transparency in contract abandonment sanctioning by the SBEC. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The 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 October 22, 2021, and ends November 22, 2021. 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 at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021.

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15, §249.17

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other

charter entity, regional education service center or shared services arrangement to report to the State Board for Educator Certification (SBEC) within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and when there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives the SBEC rule-making authority as necessary to implement the statute, requires the SBEC to create an internet portal to facilitate confidential and secure reporting, and gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, which requires the SBEC to give the educator notice and an opportunity to show cause, which requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and which gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to Texas Education Agency (TEA) staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which allows the SBEC to suspend, revoke, or sanction an educator's certificate, or refuse to issue a certificate, if the person has assisted another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files when the person knew the other person had engaged in sexual misconduct with a student or minor in violation of the law; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or to refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which sets requirements for the

notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.105(e), as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.105(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §21.160(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.160(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.160(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §21.210(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §21.210(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.210(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those who have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or to refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093(a)-(f), which requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC),

§411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means, if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which requires the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; and Texas Occupations Code (TOC), §53.021(a), 53.022-53.025, 53.051, and 53.052, which allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; which set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; which set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; which set out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; which state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, TGC; which give the SBEC rule-making authority to issue guidelines to define which crimes relate to the profession of education; which require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; and which allow a person who has been denied an educator certification or had an educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and Every Student Succeeds Act, 20 United States Code, §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.006(a)-(c-2), (f)-(g-1), and (i); 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.065, as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021; 21.105(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.160(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.210(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093(a)-(f); Texas Government Code, §§411.090, 2001.058(e), and 2001.142(a); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, 53.052, and 56.003; and the Every Student Succeeds Act, 20 United States Code, §7926.

§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

- (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
- (2) issue an inscribed or non-inscribed reprimand;
- (3) suspend a certificate for a set term or issue a probated suspension for a set term;
- (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;
- (5) impose any [additional] conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or
- (6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

- (1) the person has conducted school or education activities in violation of law;
- (2) the person is unworthy to instruct or to supervise the youth of this state;
- (3) the person has violated a provision of the Educators' Code of Ethics;
- (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;
- (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
- (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
- (7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);
- (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of Part 2 of this title (relating to Assessment);
- (9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

- (A) any conduct constituting a felony criminal offense;
- (B) indecent exposure;

- (C) public lewdness;
- (D) child abuse and/or neglect;
- (E) possession of a weapon on school property;
- (F) drug offenses occurring on school property;
- (G) sale to or making alcohol or other drugs available to a student or minor;
- (H) sale, distribution, or display of harmful material to a student or minor;
- (I) certificate fraud;
- (J) state assessment testing violations;
- (K) deadly conduct; or
- (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

- (A) offenses involving moral turpitude;
- (B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
- (C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
- (D) offenses involving school property or funds;
- (E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
- (F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
- (G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted

of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

(13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;

(14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or

(15) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test re-

quired by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and

this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct and SBEC sanctions;

(5) the potential danger the conduct poses to the health and welfare of students;

(6) the effect of the prior conduct upon any victims of the conduct;

(7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;

(8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;

(9) whether the sanction will deter future violations; and

(10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; [or]

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or [-]

(D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors shall [may] be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c). The educator:

(A) [educator] gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) [educator] assisted the school district in finding a replacement educator to fill the position;

(C) [educator] continued to work until the school district hired a replacement educator;

(D) [educator] assisted in training the replacement educator;

(E) [educator] showed good faith in communications and negotiations with the school district; [or]

(F) [educator] provided lesson plans for classes following the educator's resignation; [-]

(G) changed careers within the field of education to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates) or to a position with a higher level of authority within the principal class of certificate;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) had a change in the educator's campus assignment that caused a significant adverse impact on the educator's health condition or family needs; or

(J) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator.

(3) Mandatory [minimum] sanction for contract abandonment. [An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:]

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) [(A)] suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii) [(B)] suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii) [(C)] suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been

employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

(1) engaged in any sexual contact or romantic relationship with a student or minor;

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) possessed or distributed child pornography;

(4) was registered as a sex offender;

(5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:

(1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or

(2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.

(k) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

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

Filed with the Office of the Secretary of State on October 11, 2021.

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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 E. POST-HEARING MATTERS

19 TAC §249.42

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051, which allow the SBEC to suspend

or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; set out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code; give the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; and require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a), and (b)(1), (4), and (7); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051.

§249.42. *Procedure for the Suspension, Surrender, or Revocation of a Certificate.*

(a) When the State Board for Educator Certification (SBEC) issues an order of suspension, surrender, or revocation, the Texas Education Agency (TEA) staff shall mail a copy of the order to the person who formerly held the certificate. If the parties have not agreed to the terms of the order, TEA staff shall send a notice with the order, including the findings of fact and conclusions of law on which the SBEC based its decision, and a statement that should the person desire to request that the SBEC reconsider the decision, the person should file a Motion for Rehearing with the SBEC.

(b) A record of the SBEC action suspending, accepting a surrender, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.

(c) The TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.

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 October 11, 2021.

TRD-202104019

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors.

Background, Justification and Summary

The amendment establishes the relationship between the Board and CPE sponsors as an authorization and not contractual. The CPE sponsors are authorized by the Board to offer continuing professional education.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that CPE sponsors are authorized by the Board to offer continuing professional education.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 22, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Authorized [~~Contracted~~] Ethics Instructors.

(a) The board may authorize [~~contract with~~] any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this chapter (relating to Board Approval of Ethics Course Content) who can demonstrate that:

(1) the instructor is a CPA licensed in Texas or that the instructor is team teaching with a CPA licensed in Texas;

(2) the instructor has never been disciplined for a violation of the board's Rules of Professional Conduct unless waived by the board; and

(3) the instructor is qualified to teach ethical reasoning because he has:

(A) experience in the study and teaching of ethical reasoning; and

(B) formal training in organizational or ethical behavior instruction.

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon evidence that he has:

(1) at the time of his application obtained sufficient education in ethics substantially equivalent to a minimum of six hours of credit from a university, college or community college, of which at least three credit hours must be in organizational ethics or other education as approved by the board;

(2) teaching experience that is substantially equivalent to two or more full time semesters teaching experience at a university, college or community college, or other experience as approved by the board;

(3) spent at least 10 years performing accountancy related activities as a licensed CPA;

(4) no record of discipline for violation of the rules of professional conduct of the AICPA, the TSCPA or other national or state accountancy organization recognized by the board; and

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Act.

~~[(e) An instructor must renew the contract with the board every three years.]~~

~~(c) [(d)]~~ The board may ~~[refuse to contract, refuse to renew a contract or]~~ cancel an authorization [the contract] of any instructor who no longer meets the requirements of this section or has engaged in conduct rendering that instructor unsuitable for teaching ethics.

~~(d) [(e)]~~ An instructor must submit a current resume at the request of the board [with the contract].

~~(e) [(f)]~~ Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Act, an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

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 October 6, 2021.

TRD-202103961

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 305-7842



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

The Texas Board of Professional Geoscientists (TBPG) proposes amendments concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §§850.10, 850.61, 850.62, 850.63, and 850.65 regarding definitions, organization, and responsibilities.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

TBPG recently reviewed its rules for its four-year rule review, pursuant to Government Code §2001.039, and now proposes amendments to its rules to add acronyms and to correct wording and grammar for consistency. The proposed amendment to 22 TAC §850.10 clarifies the definition of "Licensee" in subsection 1, adding the terms, "P.G.," "Geoscientist-in-Training (GIT)," and "Geoscience Firm (Firm)" to list out the acronyms that are used throughout the rules. The proposed amendment in 22 TAC §850.61 removes the words "in order" from subsection (d)

to eliminate redundancy and for consistency. The proposed amendment in 22 TAC §850.62 capitalizes the word "Firm" in two instances when referring to a registered geoscience firm.

The proposed amendment in 22 TAC §850.63 adds the word "in" for clarity and consistency in subsection (a). The proposed amendment in 22 TAC §850.65 replaces the word "as" with "at" to correct and clarify the sentence.

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

(1) the proposed rules do not create or eliminate a government program;

(2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules do not require an increase or decrease in fees paid to the agency;

(5) the proposed rules do not create a new regulation;

(6) the proposed rules do not expand, limit, or repeal an existing regulation;

(7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and

(8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk

to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpge.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. AUTHORITY AND DEFINITIONS

22 TAC §850.10

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.002.

§850.10. Definitions.

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

(1) **Advisory opinion**--An interpretation of the Act or an application of the Act to a person with respect to a specified existing or hypothetical factual situation prepared by the Appointed Board on its own initiative or at the request of any interested person.

(2) **The Act**--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(3) **APA**--The Administrative Procedure Act (TEX. GOV'T. CODE, Chapter 2001).

(4) **Appointed Board**--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(5) **Board staff**--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

(6) **Contested case or proceeding**--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Appointed Board after an opportunity for adjudicative hearing.

(7) **Executive Director**--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(8) **License**--The whole or part of any TBPGE registration, license, certificate of authority, approval, permit, endorsement, title or similar form of permission required or permitted by the Act.

(9) **Licensee**--An individual holding a current Professional Geoscientist (P.G.) license, Geoscientist-in-Training (GIT) [GHT] certificate, or Geoscience Firm (Firm) [firm] registration.

(10) **Rule or Board Rule**--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code Title 22; Part 39; Chapters 850 and 851.

(11) **Sanction**--A penalty imposed in a disciplinary process. An imposed disciplinary action is a sanction.

(12) **TBPGE**--The Texas Board of Professional Geoscientists, as used in this Chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

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 October 7, 2021.

TRD-202103977

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 936-4408



SUBCHAPTER B. ORGANIZATION AND RESPONSIBILITIES

22 TAC §§850.61 - 850.63, 850.65

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

This section affects the Texas Administrative Procedure Act, Government Code § 2001.021, regarding petition for adoption of rules.

§850.61. Responsibilities of the Board - Meetings.

(a) Meetings will be conducted under Robert's Rules of Order.

(b) Unless the Act provides another standard, when a quorum (a majority of the members) is present, a motion before the Appointed Board is carried by an affirmative vote of the majority of the members of the Appointed Board present.

(c) Meetings will be conducted as public meetings under the Government Code, Chapter 551, Subchapter A, Open Meetings.

(d) The Appointed Board will determine on a case by case basis, the number of and the location of cameras and recording devices [in order] to maintain order during Appointed Board meetings.

(e) The Appointed Board shall provide the public a reasonable opportunity to appear before the Appointed Board at its meetings and to speak on any issue under the jurisdiction of the TBPGE. Subject to

the statutory requirement of a "reasonable opportunity," the Appointed Board may limit the amount of time that each speaker may speak on a given subject under the jurisdiction of the TBPG.

§850.62. General Powers and Duties of the TBPG.

(a) Unless exempted by the Act, the TBPG ensures that a person may not engage in the public practice of geoscience unless the person holds a license issued by the TBPG.

(b) The TBPG ensures that a person does not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under the authority provided to the TBPG under the Act.

(c) The Act and Rules adopted by the Appointed Board under the authority of the Act apply to every licensee, registered Firm [firm], Geoscientist-in-Training, and unlicensed individual or unregistered firm providing or offering to provide professional geoscience services.

(d) Unless an exemption in the Act applies, the TBPG ensures that all Firms [firms] offering to engage or engaging in the public practice of professional geoscience in Texas are registered as a Geoscience Firm.

(e) Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the TBPG meetings and programs.

(f) The TBPG welcomes appropriate citizen input and communications at TBPG meetings and upon prior reasonable notice to the TBPG, the TBPG will provide interpreters and/or sign language specialists to assist the public in presenting their input to the TBPG.

(g) The TBPG works with each state agency that uses the services of a person licensed by the TBPG and other state agencies as determined by the Appointed Board, including a state agency with which the Appointed Board has entered into a Memorandum of Understanding that addresses the coordination of activities or complaints, to educate the agencies' employees regarding the procedures by which complaints are filed with and resolved by the TBPG.

§850.63. Responsibilities of the Appointed Board.

(a) The Appointed Board may take the disciplinary actions described in and set forth in the Act on the grounds described in and set forth in the Act, and may issue orders accordingly.

(b) The Appointed Board may deny a license on the grounds described in and set forth in the Act.

(c) The Appointed Board may reinstate a license by the procedures and on the conditions set forth in the Act.

(d) The Appointed Board may impose an administrative penalty based on the factors and subject to the limitations set forth in the Act.

(e) The Appointed Board, through its Executive Director, shall give notice of its order imposing a sanction or penalty to all parties. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the specific disciplinary action to be taken and the amount of any penalty assessed, if applicable;
- (3) whether or not a motion for rehearing is required as a prerequisite for appeal; and

(4) the motion for rehearing time table.

(f) Licensees will be notified at least 60 days in advance of impending expiration of the license and what the fee will be.

(g) Special accommodation exams will be made available as required by the Americans with Disabilities Act of 1990, Public Law 101-336.

§850.65. Petition for Adoption of Rules.

Any interested party may request adoption of a rule(s) by submitting a letter of request to the TBPG with a draft of the rule(s) attached. At [As] a minimum the request should contain:

- (1) items to be deleted should be bracketed or lined through;
- (2) items added should be underlined; and
- (3) the rationale for the requested rule change.

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

Filed with the Office of the Secretary of State on October 7, 2021.

TRD-202103978

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 936-4408



CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to rules and repeals concerning the licensure and regulation of Professional Geoscientists in Texas. TBPG proposes amendments to 22 TAC §§851.10, 851.20 - 851.22, 851.28 - 851.32, 851.40, 851.43, 851.85, 851.101 - 851.106, 851.108, 851.109, 851.111 - 851.113, 851.151 - 851.153, 851.156 - 851.159, 851.203, 851.204, 851.220 regarding TBPG licensing and enforcement rules. TBPG also proposes to repeal 22 TAC §851.83 regarding temporary exemption of certain licensees from continuing education requirements, and 22 TAC §851.154 regarding student loan default being ground for nonrenewal of license.

BACKGROUND, PURPOSE, AND SUMMARY OF CHANGES

TBPG recently reviewed its rules for its four-year rule review, pursuant to Government Code §2001.039, and is now proposing amendments and repeals to its rules to make clarifications and changes and to correct wording and grammar.

The proposed amendments clarify definitions regarding geoscience firms, remove a definition for a sole proprietor, and add a definition for a sole practitioner. The proposed amendment to 851.30 modifies the application process for geoscience firms to now require a federal employer identification number (EIN) instead of the previous requirement for a certificate of authority from the Office of the Secretary of State. The modification to this rule will assist in streamlining the process for registrants and it will be more consistent with other licensing agencies in

the state of Texas. The proposed amendments add TBPG's new examination waiver policy for P.G. applicants in the Soil Science discipline. The proposed amendments make changes throughout the rules to remove the name "National Association of State Board of Geology (ASBOG®)" where it appears and replace it with the shortened name "ASBOG®" when referring to the provider of the Geology Fundamentals and Practice exams. Other proposed changes throughout the rules capitalize the word "Firm" when it refers to a registered geoscience firm, change the phrase "public health, safety, and welfare" for consistency, add acronyms where possible, and correct wording and grammar for accuracy.

In subchapter A, proposed amendment to 851.10 clarifies the definition of "Geoscience Firm," removes the definition of "Sole Proprietor," and adds a definition for "Sole Practitioner." Other proposed changes to the definitions include adding acronyms for "P.G." and "GIT," removing unnecessary words, and correcting wording and grammar for consistency.

In subchapter B, proposed changes to 851.20 remove a reference to NAFTA and change it to refer to "the U.S.-Mexico-Canada Agreement (USMCA) in subsection (h). Proposed amendment to 851.21 revises the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name. Proposed amendment to 851.22 removes unnecessary wording in subsection (a), modifies the name for "Form VI-Request for Waiver of Licensing Requirement - Board Policy and Procedures," and renumbers the section. Other changes include adding TBPG's new examination waiver policy for P.G. applicants in the Soil Science discipline and revising the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name. Proposed amendment to 851.28 adds wording in subsection (a) to indicate that renewal notices that are sent to licensees will be sent via mail "or email" at least 60 days prior to the license expiration date. Proposed amendment to 851.29 removes the term "in order" in multiple instances and clarifies subsection (b)(3) regarding licensure in another jurisdiction or country that is issued either "without exam or with a similar exam" for clarity. Proposed amendment to 851.30 streamlines the application process for firm registration so as to now require a federal employer identification number (EIN) instead of a certificate of authority from the Office of the Secretary of State; the amendment capitalizes the word "Firm" when referring to a registered geoscience firm; it makes changes to the name "ASBOG®" to reflect ASBOG's shortened name; removes unnecessary definition for "certificant;" it clarifies the definition for Council of Soil Scientist Examiners; and renumbers the section accordingly. Proposed amendment to 851.31 renames the section to be: "Temporary P.G. License and Temporary Firm Registration" and adds language for a firm that wishes to temporarily engage in the public practice of geoscience in this state to be able to apply for temporary firm registration in Texas if it meets certain requirements. Proposed amendment to 851.32 revises the name "National Association of State Boards of Geology (ASBOG®)" to be "ASBOG®" to reflect ASBOG's shortened name in subsection (b) (4) (A). Proposed amendment to 851.43 revises subsection (c) to show that "A GIT is exempt from the continuing education requirement during the first renewal period. The continuing education requirement must be met in subsequent renewals." Rule 851.83 is proposed for repeal. Proposed amendment to 851.85 rephrases the term "public health, safety, and welfare" for consistency, and it

replaces the word "waive" in subsection (b) (2) with the term "temporarily suspend" for accuracy.

In subchapter C, proposed amendment to 851.101 replaces the term "Professional Geoscientist" with the acronym "P.G." and replaces the term "Geoscientist-in-Training" with the term "GIT" in multiple places. The proposed amendment also replaces the term "Geoscience Firm" with the word "Firm." Other changes include removing the phrase "or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost," when referring to professional geoscience services rendered. Proposed amendment to 851.102 cleans up the language in subsection (c) so that it reads, "A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence including work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm; or evidenced by an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of a reasonably prudent Professional Geoscientist or Geoscience Firm." Proposed amendment to 851.103 cleans up the language in subsection (a) so that it reads, "A Professional Geoscientist or Geoscience Firm shall not practice geoscience in any manner that, when measured by generally accepted geoscience standards or procedures, does or is reasonably likely to result in the endangerment of public health, safety, or welfare. Such practice is deemed to be 'reckless.'" Proposed changes to subsection (b) (3) revise the sentence so that it reads, "Action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to a particular project when such disregard jeopardizes or has the potential to jeopardize public health, safety, or welfare." Proposed amendment to 851.104 removes the phrase "an act" in subsection (a), and replaces the term "government funded" with "government-funded" for accuracy. Proposed changes also rephrase the term "public health, safety, and welfare" in subsections (f) and (h) for consistency. Proposed amendment to 851.105 replaces the word "which" with "that" for accuracy, removes the phrase, "of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm" because it is unnecessary in the sentence, and replaces the terms "Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm" with the acronyms "P.G., GIT, or Firm." Proposed amendment to 851.106 removes the word "which" in subsection (b) (3) and replaces it with the word "that," and removes the term "in order" in subsection (g). Proposed amendment to 851.108 removes the words "Texas Board of Professional Geologists (TBPG)" and replaces it with the acronym "TBPG." Proposed amendment to 851.109 removes the phrase "it is found by" in subsection (a), and replaces it with the word "finds." Proposed changes in subsection (a) also remove the terms "Act or the rules of the TBPG" and replace it with "TBPG Act or rules." Proposed changes also rephrase the term "public health, safety, and welfare" in subsection (b), and remove the term "In order to" and replace with "To" in subsection (c) for accuracy and consistency. Proposed amendment to 851.111 rephrases the term "public health, safety, and welfare" in subsection (a), and adds the term "GIT" in subsection (c), when referring to "A Professional Geoscientist, GIT, or Geoscience Firm shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the Professional Geoscientist's or Geoscience Firm's employees and associates." Proposed amendment to 851.112 simply rewords the rule.

In subchapter D, proposed amendment to 851.151 revises subsection (a)(2)(B) to show that unless a person is licensed by TBPG, a person may not otherwise represent to the public that the person is qualified to: "Engage in the practice of geoscience for the public, including individuals, corporations, governments or courts." It also corrects punctuation. Proposed amendment to 851.152 capitalizes the word "Firm" in several places, removes the entire subsection (b) because this information is already included in 22 TAC 851.10 under the definition of a Geoscience Firm, and renumbers the subsection. The amendment also removes the term "sole proprietor" in previous subsection (d), replacing it with the term "sole practitioner," and it removes the term "non-exempt" when referring to the public practice of geoscience. Proposed amendment to 851.153 adds the phrase "including GITs" in the statement that "Professional Geoscientists shall perform or directly supervise the geoscience services of any subordinates, including GITs." Rule 851.154 is proposed for repeal to be consistent with a statutory change that no longer supports the board taking disciplinary action against a person on the basis that the person defaulted on a student loan. Proposed amendment to 851.156 revises a sentence in subsection (c) to read, "A Professional Geoscientist shall seal only documents that contain geoscience services performed by or under the Professional Geoscientist's direct supervision." In subsection (d), changes are made to rephrase the term "public health, safety, and welfare" for consistency. In subsection (g)(1)(B), the term "his/her" is replaced with the term "the Professional Geoscientist's." In subsection (j), the term "insure" is replaced with the term "ensure" for accuracy, and the term "his/her" is replaced with "the Professional Geoscientist's." Previous subsection (k) has been separated into two sections, existing subsection (k) and new subsection (l), and changes are made so that the word "their" is replaced with the term "a P.G.'s," when referring to documents released from a P.G.'s control, and the section is renumbered. Newly re-sequenced subsection (o) rephrases the term "Professional Geoscientist(s)," and newly re-sequenced subsection (u) adds the word "subsequently." Proposed amendment to 851.157 rephrases a sentence in subsection (e)(2) regarding the two types of complaints and investigations to read: "Complaints and investigations that are initiated by the Board staff or an Appointed Board Member as a result of information that may indicate a violation that becomes known to the Board staff or an Appointed Board Member." Proposed amendment to 851.158 rephrases subsection (1)(l) to read that staff have the option to: "Dismiss, with or without advisement, complaints that are meritless, non-jurisdictional, or that do not involve a threat or potential threat to public health, safety, and welfare, with the exception of complaints that involve violations of the continuing education requirement." Proposed changes also remove the word "and" in subsection (3)(B)(ii). Proposed amendment to 851.159 adds commas in subsection (a)(5) for accuracy, replaces the word "corporation" with the word "firm" throughout the rule, removes the word "or" in subsection (b)(10) and (c)(8), and rephrases "public health, safety, and welfare" throughout the rule for consistency.

In subchapter E, proposed amendment to 851.203 removes the word "the" before "TBPG" in subsection (f)(3). Proposed amendment to 851.204 adds a comma in subsection (e) before the word, "if any." Proposed amendment to 851.220 removes the term "the Board" in two places and replaces it with "TBPG."

FISCAL NOTE - STATE AND LOCAL GOVERNMENT

Rene D. Truan, Executive Director of the Texas Board of Professional Geoscientists, has determined that for each fiscal year of

the first five years the rules are in effect these proposals have no foreseeable implications relating to cost or revenues of the state or of local governments caused by enforcing or administering the proposed rules.

PUBLIC BENEFIT AND COST

Mr. Truan has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the sections includes ensuring that TBPG rules are clear and consistent as they relate to geoscience licensure in Texas. There will be no anticipated economic cost to individuals who are required to comply with the proposed sections.

SMALL, MICRO-BUSINESS, LOCAL ECONOMY, AND RURAL COMMUNITIES ECONOMIC IMPACT ANALYSIS

Mr. Truan has determined that the proposed rule will not have an adverse effect on small businesses, micro-businesses, local economy, or rural communities. Consequently, neither an economic impact statement, a local employment impact statement, nor a regulatory flexibility analysis is required.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the rule would be in effect:

- (1) the proposed rules do not create or eliminate a government program;
- (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed rules do not require an increase or decrease in fees paid to the agency;
- (5) the proposed rules do not create a new regulation;
- (6) the proposed rules do not expand, limit, or repeal an existing regulation;
- (7) the proposed rules do not increase or decrease the number of individuals that are subject to the rules' applicability; and
- (8) the proposed rules do not positively or adversely affect this state's economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Truan has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. Although Professional Geoscientists and Registered Geoscience Firms play a key role in environmental protection for the state of Texas, this proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposed amendments and new rules may be submitted in writing to Rene D. Truan, Executive Director, Texas Board of Professional Geoscientists, 333 Guadalupe Street, Tower I-530, Austin, Texas 78701 or by mail to P.O. Box 13225, Austin, Texas 78711 or by e-mail to rtruan@tbpg.texas.gov. Please indicate "Comments on Proposed Rules" in the subject line of all e-mails submitted. Please submit comments within 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

22 TAC §851.10

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.002 and 1002.151.

§851.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapter 1002, cited as the Texas Geoscience Practice Act.

(2) Accredited institutions or programs--An institution or program which holds accreditation or candidacy status from an accreditation organization recognized by the Council for Higher Education Accreditation (CHEA) or other appropriate accrediting entity accepted by the Appointed Board.

(3) Address of record--In the case of an individual or Firm [firm] licensed, certified, or registered by the Texas Board of Professional Geoscientists (TBPG), the address which is filed by the licensee with the TBPG.

(4) Advertising or Advertisement--Any non-commercial or commercial message, including, but not limited, to verbal statements, bids, web pages, signage, provider listings, and paid advertisement that [which] promotes geoscience services.

(5) Applicant--An individual making application for a Professional Geoscientist (P.G.) [geoscientist] license or a Geoscientist-in-Training (GIT) certification or [;] a firm and/or the Authorized Official of a Firm making application for a Geoscience Firm (Firm) registration.

(6) Application--The forms, information, attachments, and fees necessary to obtain a license as a Professional Geoscientist, the registration of a Firm, or a certification as a Geoscientist-in-Training (GIT).

(7) Appointed Board--Those persons who are appointed by the Governor and confirmed by the Senate and qualify for office who may deliberate, vote, and be counted as a member in attendance of the Texas Board of Professional Geoscientists.

(8) ASBOG®--[National] Association of State Boards of Geology. ASBOG® serves as a connective link among the individual state geology regulatory [geologic registration licensing] boards for the

planning and preparation of uniform procedures and the coordination of geologic protective measures for the general public. One of ASBOG®'s principal services is to develop standardized written examinations for determining qualifications of applicants seeking licensure as professional geologists. State boards of registration are provided with uniform examinations that are valid measures of competency related to the practice of the profession.

(9) Authorized Official of a Firm (AOF)--The individual designated by a Geoscience Firm to be responsible for [the process of] submitting the application to TBPG for the initial registration of the Firm [firm with the TBPG]; ensuring that the Firm [firm] maintains compliance with the registration requirements [of registration with the TBPG]; ensuring that the Firm [firm] renews its registration status for as long as the Firm [firm] offers or provides professional geoscience services; ensuring that the designated geoscientist is a currently licensed P.G.; and communicating with the TBPG regarding any matter.

(10) Board staff--The Executive Director and all other staff employed by the Texas Board of Professional Geoscientists (administrative, investigative, and other support staff, etc.).

~~[(11) Certificate--An individual holding a certificate as a Geoscientist-in-Training.]~~

~~[(11) [(12)] Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.~~

~~[(12) [(13)] Complainant--Any individual who has submitted a complaint to the TBPG, as provided in this chapter.~~

~~[(13) [(14)] Complaint--An allegation or allegations of wrongful activity related to the practice or offering of professional geoscience services in Texas. A complaint is within the TBPG's jurisdiction if the complaint alleges a violation of statutes or rules applicable to the public practice of geoscience or the requirements of licensure of a Professional Geoscientist (P.G.) or registration by an individual, firm, or other legal entity.~~

~~[(14) [(15)] Council of Soil Scientist Examiners (CSSE)--The [purpose of the] Council of Soil Science Examiners is a national organization that creates, scores and maintains [is to create, score and maintain] examinations for State Soil Scientists regulatory [licensing] programs. CSSE develops professional criteria to confirm that individuals meet and exceed minimum qualifications to practice the profession.~~

~~[(15) [(16)] Default--The failure of the Respondent to respond in writing to a notice or appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, e-mail, fax or other electronic media in accordance with the notice of hearing or notice of informal conference. Default results in the actions being taken that were described in the notice of the hearing for a contested case or informal conference in the event of a failure to appear.~~

~~[(16) [(17)] Direct supervision--Critical watching, evaluating, and directing of geoscience activities with the authority to review, enforce, and control compliance with all geoscience criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the geoscience work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised individual(s).~~

~~[(17) [(18)] Discipline--One of three recognized courses of study under which an individual may qualify for a license as a Profes-~~

sional Geoscientist. Geoscience is comprised of the following disciplines: geology, geophysics, and soil science.

(18) [(49)] Executive Director--The individual appointed by the Appointed Board who shall be responsible for managing the day to day affairs of the board, in accordance with the Act.

(19) [(20)] Filed date--The date that the document has been received by the TBPG or, if the document has been mailed to the TBPG, the postmark date of the document.

(20) [(21)] Geology--The discipline of geoscience that addresses the science of the origin, composition, structure, and history of the Earth and its constituent soils, rocks, minerals, fossil fuels, solids, fluids and gases [gasses], and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth, and is applied with judgment to develop ways to utilize, economically, those natural and introduced agents, forces, and processes for the benefit of mankind. There are many subdivisions of geology, which include, but are not limited to, the following: historical geology, physical geology, economic geology, mineralogy, paleontology, structural geology, mining geology, petroleum geology, physiography, geomorphology, geochemistry, hydrogeology, petrography, petrology, volcanology, stratigraphy, engineering geology, and environmental geology.

(21) [(22)] Geophysics--Refers to that science which involves the study of the physical Earth by means of measuring its natural and induced fields of force, and its responses to natural and induced energy or forces, the interpretation of these measurements, applied with judgment to benefit or protect the public.

(22) [(23)] Geoscience--The science of the Earth and its origin and history, the investigation of the Earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the Earth as applied with professional judgment to develop ways to utilize, [economically,] those natural and introduced agents, forces, and processes for the benefit of the public.

(23) [(24)] Geoscience Firm (Firm)--A firm, corporation, or other business entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas and that is registered by the board to engage in the public practice of geoscience. [Any entity that engages in or offers to engage in the practice of professional geoscience before the public in the State of Texas This term includes a sole practitioner registered with TBPG as a Geoscience Firm, a sole proprietor registered as a Geoscience Firm, co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization.]

(24) [(25)] Geoscience services (also professional geoscience services, and professional geoscience)--Services that [which] must be performed by or under the direct supervision of a Professional Geoscientist and that [which] meet the definition of the practice of geoscience as defined in the Texas Occupations Code, §1002.002(3). A service shall be conclusively considered a professional geoscience service if it is delineated in that section; other services requiring a Professional Geoscientist by contract, or services where the adequate performance of that service requires a geoscience education, training, or experience in the application of special knowledge or judgment of the geological, geophysical or soil sciences to that service shall also be conclusively considered a professional geoscience service. These services may include consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work, and the responsible supervision of those tasks.

(25) [(26)] License--The legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter.

(26) [(27)] License certificate--Any certificate issued by the TBPG showing that a license, registration, or certificate has been granted by the TBPG. A certificate is not valid unless it is accompanied by a card issued by the TBPG that [which] shows the expiration date of the license, registration or certification.

(27) [(28)] License status--The status of a Professional Geoscientist license, Geoscience Firm registration, or GIT certification is one of the following:

(A) Current license--A license, registration, or certification that has not expired.

(B) Expired license--A Professional Geoscientist license that has been expired for less than three years and is therefore renewable, or a Geoscience Firm registration or GIT certification that has been expired for less than one year and is therefore renewable.

(C) Permanently expired license--A license, registration, or certification that is no longer renewable.

(28) [(29)] Licensee--An individual or other entity holding a current Professional Geoscientist license, GIT certificate, or Firm [firm] registration.

(29) [(30)] Meritless complaint--a complaint in which the allegations are unfounded or groundless (no legitimate basis for the allegation) or the allegations are unsubstantiated or unverified (no determination could be made as to whether there was any basis for the allegation).

(30) [(31)] Non-jurisdictional complaint--a complaint in which the TBPG has no jurisdiction over the alleged conduct.

(31) [(32)] Person--Any individual, firm, partnership, corporation, association, or other legal public or private entity, including a state agency or governmental subdivision.

(32) [(33)] Professional Geoscientist or P.G.--An individual who holds a license as a Professional Geoscientist issued by the TBPG.

(33) [(34)] Practice for the public--

(A) Providing professional geoscience services:

(i) For a governmental entity in Texas;

(ii) To comply with a rule established by the State of Texas or a political subdivision of the State of Texas; or

(iii) For the public or a firm or corporation in the State of Texas if the practitioner accepts ultimate liability for the work product; and

(B) Does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(34) [(35)] The Public--Any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with or be impacted by professional geoscience services.

(35) [(36)] Registered Firm [firm]--A firm that is currently registered with the TBPG.

(36) [(37)] Registrant--An individual whose sole-proprietorship is currently registered with the TBPG or a firm that is currently registered with the TBPG.

(37) [(38)] Respondent--Any individual or firm, licensed or unlicensed, who has been charged with violating any provision of the Act or a rule or order issued by the Appointed Board.

(38) [(39)] Responsible charge--The independent control and direction of geoscience services or the supervision of geoscience services by the use of initiative, skill, and independent judgment.

(39) [(40)] Rule or Board Rule--State agency rules adopted by the Appointed Board and as published in the Texas Administrative Code, Title 22, Part 39, Chapters 850 and 851.

(40) [(41)] Soil Science--Soil science means the science of soils, their classification, origin and history, the investigation and interpretation of physical, chemical, morphological, and biological characteristics of the soil including, among other things, their ability to produce vegetation and the fate and movement of physical, chemical, and biological contaminants.

(41) [(42)] Sole practitioner [~~Sole proprietorship~~]-~~An individual Professional Geoscientist who operates a geoscience business and who is in responsible charge of all geoscience work performed by or for the business. [A single owned Professional Geoscientist's geoscience business that has no separate legal existence from its owner].~~

(42) [(43)] TBPG--The Texas Board of Professional Geoscientists, as used in this chapter, is a reference to the whole or any part of the entity that is the Texas Board of Professional Geoscientists.

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 October 7, 2021.

TRD-202103979

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 230-5576



SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

22 TAC §§851.20 - 851.22, 851.28 - 851.32, 851.40, 851.43, 851.85

STATUTORY AUTHORITY

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; §1002.255, which authorizes the Board to establish license eligibility requirements; §1002.259, which authorizes the Board to waive certain requirements for licensure; §1002.261, which authorizes the Board to issue a license to applicants who meet the requirements of licensure; §1002.351, which authorizes the Board to regulate the public practice of geoscience by a firm or corporation; and §1002.352, which authorizes the Board to establish criteria for geoscientists-in-training.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, 1002.254, 1002.255, 1002.256, 1002.257, 1002.258, 1002.259, 1002.261, 1002.262, 1002.301, 1002.302, 1002.351, and 1002.352.

§851.20. Professional Geoscientist Licensing Requirements and Application Procedure.

(a) Requirements for licensure:

(1) Passing score on an examination or examinations required by the Texas Board of Professional Geoscientists (TBPG) covering the fundamentals and practice of the appropriate discipline of geoscience documented as specified in §851.21 of this chapter;

(2) Has a documented record of at least five years of qualifying work experience during which the applicant has demonstrated being qualified to assume responsible charge of geoscience services as specified in §851.23 of this chapter and Texas Occupations Code (TOC) §1002.256:

(A) A total of one year of qualifying work experience credit may be granted for each full-time year of graduate study in a discipline of geoscience, not to exceed two years;

(B) The Appointed Board may accept qualifying work experience in lieu of the education requirement as provided in TOC §1002.255;

(3) Academic requirements for licensure as specified in TOC §1002.255 and §851.25 of this chapter; and

(4) Supporting documentation of any license requirement, as determined by Board staff or the Appointed Board, relating to criminal convictions as specified in §851.108 of this chapter; relating to substance abuse issues as specified in §851.109 of this chapter; and relating to issues surrounding reasons the Appointed Board may deny a license as specified in the Geoscience Practice Act at TOC §1002.401 and §1002.402.

(b) An applicant may request a waiver of any licensure requirement by submitting a Waiver Request (Form VI) and any additional information needed to substantiate the request for waiver with the application. If the Appointed Board determines that the applicant meets all the other requirements, the Appointed Board may waive any licensure requirement except for the payment of required fees.

(c) An application is active for one year including the date that it is filed with the Appointed Board.

(d) Professional Geoscientist application procedure. To be eligible for a Professional Geoscientist license under this chapter, an applicant must submit or ensure the transmission (as applicable) of the following to the TBPG:

(1) A completed, signed application for licensure as a Professional Geoscientist;

(2) Documentation of having passed an examination as specified in §851.21 of this chapter;

(3) Documentation of having met the experience requirements as specified in §851.23 of this chapter;

(4) Official transcript(s), as specified in §851.25 of this chapter;

(5) The application/first year licensing fee as specified in §851.80(b) of this chapter;

(6) Verification of every license, current or expired, in any regulated profession related to the public practice of geoscience in any jurisdiction (for example, Professional Engineer, licensed Water Well Driller, etc.); and

(7) Any written explanation and other documentation as required by instructions on the application or as communicated by Board staff, if applicable.

(e) Any transcripts, evaluations, experience records or other similar documents submitted to the TBPG in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the Executive Director authorizes its use.

(f) An application may be forwarded to the Appointed Board at the Executive Director's discretion.

(g) Obtaining or attempting to obtain a license by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(h) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the TBPG to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In most cases, a copy of a current visa or something equivalent will be sufficient. For applicants from countries that have a standing trade agreement with the US that specifically and adequately addresses professional licensure, such as the U.S.-Mexico-Canada Agreement (USMCA) [NAFTA] or AUSFTA, a copy of a visa is not required; however, the applicant must identify the trade agreement under which the applicant would be working in the US, and must establish the applicant has the required legal status to work in Texas.

(i) Applications are not reviewed until the application and fee have been received in the TBPG office. Applicants are initially notified of any deficiencies in the application within approximately thirty (30) days after the receipt of the application and fee.

(j) An applicant should respond to a deficiency notice within forty-five (45) days from the date of notification for applicants to correct deficiencies. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire as scheduled one year after the date it became active.

(k) Upon receipt of all required materials and fees and satisfying all requirements in this section, the applicant shall be licensed and a unique Professional Geoscientist license number shall be assigned to the license. A new license shall be set to expire at the end of the calendar month occurring one year after the license is issued. Board staff shall send a new license certificate, license certificate expiration card, and a wallet license expiration card as provided in subsection (p) of this section.

(l) A new license is valid for a period of one year from the date it is issued. Upon the first timely renewal of a license, the renewal period shall be from the date the license is renewed until the last day of the next birth month for the licensee. A license that is renewed late (one day after the expiration date of the license through the end of the 36th month past the expiration date of the license) is renewed in accordance to the rules set forth in §851.28 of this chapter.

(m) A license number is not transferable.

(n) Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for any other license.

(o) Altering a license wall certificate, license certificate expiration card, or wallet license expiration card in any way is prohibited and is grounds for a sanction and/or penalty.

(p) The Professional Geoscientist license is the legal authority granted the holder to actively practice geoscience upon meeting the requirements as set out in the Act and this chapter. When a license is issued, a license wall certificate, the first license certificate expiration

card, and the first wallet license expiration card are provided to the new licensee.

(1) The license wall certificate shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license was originally issued.

(2) The license wall certificate is not valid proof of licensure unless the license certificate expiration card is accompanying the license certificate and the date on the license certificate card is not expired.

(3) The license certificate expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, and the date the license will expire, unless it is renewed.

(4) The wallet license expiration card shall bear the name of the licensee, the licensee's unique Professional Geoscientist license number, the discipline in which the individual is licensed, and the date the license will expire, unless it is renewed.

(q) Once the requirements for licensure have been satisfied and the new license and license certificate have been issued, within sixty (60) days of notification the new licensee must then:

(1) Obtain a seal and submit TBPG Seal Submission (Form X) to the TBPG; and

(2) Register as a Geoscience Firm, if appropriate, as described in §851.30 of this chapter.

(r) An applicant who is a military service member, military veteran or a military spouse is directed to TBPG rule §851.26 of this chapter for additional licensing provisions.

§851.21. Licensing Requirements-Examinations.

(a) Qualifying examinations:

(1) An applicant for the Geology discipline must pass both parts of the ASBOG® [National Association of State Boards of Geology (ASBOG®)] examination. Applicants taking the ASBOG® examinations must also abide by the rules and regulations of ASBOG®.

(2) An applicant for the Soil Science discipline must pass both parts of the Council of Soil Science Examiners (CSSE) examination. Applicants taking the CSSE examinations must also abide by the rules and regulations of CSSE.

(3) An applicant for the Geophysics discipline must pass the Texas Geophysics Examination (TGE).

(b) An applicant may request an accommodation in accordance with the Americans with Disabilities Act. Proof of disability may be required.

(c) An applicant who does not timely arrive at and complete a scheduled examination will forfeit the examination fee.

(d) Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(e) An applicant who has passed an examination may not retake that type of examination.

(f) Exam Waiver. Applicants requesting a waiver from any examination(s) shall complete a Waiver Request (Form VI) and shall comply with §851.22 regarding Waivers and Substitutions.

(g) Examination requirements and examination procedure: A qualified individual who has not passed qualifying licensing examination(s) may access and abide by all relevant components of one of the

following procedures to sit for a qualifying examination(s) in the appropriate discipline:

(1) Licensure in the discipline of geology (part I)/ASBOG® Fundamentals of Geology examination:

(A) Requirements: Completion of the education qualifications for licensure as specified in Texas Occupations Code §1002.255 and §851.25 of this chapter or currently enrolled in a course of study that meets the education requirements for licensure and within two regular semesters of completion of the qualifying course of study.

(B) Procedure:

(i) The applicant shall complete and submit an Exam Request (Form E) and any required documents to the TBPG, along with the appropriate fee by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.

(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Candidate Request Form shall be provided to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(2) Licensure in the discipline of geology (part II)/ASBOG® Practice of Geology examination:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG.

(ii) Meet all other qualifications for licensure in subsection (a) of this section, and be within six months of meeting the qualifying experience requirement.

(B) Procedure:

(i) The applicant shall complete and submit both the Application for P.G. Licensure (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and an Exam Request (Form E) along with the appropriate fee and any required documents to the TBPG, by the deadline posted on the TBPG website for the examination date desired by the applicant.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will mail an ASBOG® Examination Candidate Request Form to the applicant.

(iii) The applicant shall submit the ASBOG® Examination Candidate Request Form and send the form, along with the examination fee to ASBOG®. A courtesy copy of the ASBOG® Examination Candidate Request Form shall be provided to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination after receiving the results from ASBOG®.

(3) Licensure in the discipline of geophysics/TGE:

(A) Requirements:

(i) Under application for licensure as a Professional Geoscientist with the TBPG and meet all qualifications for licensure in subsection (a) of this section, with the exception of the examination requirement; or

(ii) Under application for certification as a Geoscientist-in-Training with the TBPG and meet all qualifications for certification as a Geoscientist-in-Training in §851.41 of this chapter with the exception of having passed the TGE.

(B) Procedure:

(i) The applicant shall complete and submit an Application for Professional Geoscientist (Form A), in accordance with the application procedures specified in subsection (d) of this section, along with the appropriate fee and Examination Request Form (Form E) along with the appropriate fee and any required documents to the TBPG.

(ii) The Board staff will review the application and inform the applicant of any deficiencies in the application. Upon determination that the requirements have been met, the Board staff will provide TGE scheduling and examination payment information to the applicant.

(iii) The applicant shall submit the required information, along with the examination fee to the TBPG.

(iv) The applicant shall follow all examination administration procedures and take the examination.

(v) The Board staff shall notify the applicant of the results of the examination.

(4) Licensure in the discipline of soil science/Council of Soil Science Examiners (CSSE) Fundamentals of Soil Science and Practice of Soil Science Examinations: An applicant must meet the examination requirements of the CSSE; apply to take the required examinations directly with the CSSE and submit the required fees; follow all examination procedures of the CSSE; take and pass both parts of the examination; and follow CSSE procedures to ensure that the passing scores are forwarded to the TBPG

§851.22. Waivers and Substitutions: Policy, Procedures, and Criteria.

(a) Introduction: The Texas Board of Professional Geoscientists is charged with the responsibility of issuing a license to engage in the public practice of geoscience in the state of Texas only to those individuals who meet the qualifications for licensure, as provided by Texas law. The successful completion of the required examination for the specific discipline is an essential element in the Professional Geoscientist licensure process [~~and, to date, the Board has found extremely limited circumstances that would cause the Board to consider waiving this requirement~~].

[(+)] The Texas Geoscience Practice Act (TGPA) (Texas Occupations Code, Chapter 1002[]), §1002.259) provides that "Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license."

(1) [(2)] An applicant for licensure as a Professional Geoscientist may request a waiver by submitting a copy of Form VI - "Request for Waiver of Licensing Requirement - Board Policy and Procedures," ["REQUEST FOR WAIVER OF LICENSING REQUIREMENT-BOARD POLICY AND PROCEDURES"], along with supporting documentation. Only an applicant for licensure may request

a waiver. An applicant must have submitted a complete application, supporting documentation (such as transcripts and qualifying experience record), and applicable fees [in order] for a waiver request to be considered.

(2) [(3)] Once a request for a waiver and all relevant documents and information supporting the request have been received, subject to scheduling logistics, the request will be placed on the next available meeting of the TBPG's Application Review and Continuing Education Committee.

(b) Guidance Policy: The following policy was developed by the TBPG Board and is intended to be guidance for the Application Review and Continuing Education Committee and the Board in consideration of a request for waiver. In accordance with TOC §1002.259, an approval of a waiver request requires a vote of two-thirds [2/3] of the TBPG Appointed Board (6 affirmative votes), regardless of the number of Board members in attendance. A request for the substitution of experience for education (provided by TOC §1002.255(b)) requires a simple majority vote of a quorum of the TBPG Appointed Board to be approved.

(c) TBPG's Application Review and [And] Continuing Education Committee Review: TBPG's Application Review and Continuing Education Committee will review the request and supporting documentation and recommend to the full TBPG Board to grant [whether] or not [to] grant the requested waiver. An applicant should provide a written justification, along with supporting documentation. An applicant may also appear before the Committee and the full Board to provide testimony to support the request. All requests the Committee recommends for approval will be scheduled for review by the full Board. Requests the Committee does not recommend for approval will not be submitted to the full Board [board] for review, unless the applicant requests review by the full Board.

(d) TBPG's Board Initial Review: TBPG Appointed Board will review requests the Committee recommends for approval and supporting documentation and will determine whether or not to approve the request (grant the requested waiver). An applicant whose request for a waiver or substitution was denied and who believes that there is additional information that was not available to the Board when it reviewed the request, may submit additional information to staff regarding the current application, along with a written request that the Board reconsider the request. If staff determines that new information has been submitted that may be relevant to the Board's review of an application/request, then staff will schedule the application/waiver request for reconsideration. In the review of a request to reconsider its decision on an application/waiver request, because new information has been submitted, the Board will first determine by a simple majority vote whether to reconsider the application/waiver request, based on whether relevant new information has been submitted. If the Board determines [were to determine] by vote that the new information warrants reconsideration of an application/waiver request, the Board will [would then] reconsider the waiver request, including all of the new information available at that time. An applicant may appear before the Board and present information related to the request. The Board will reconsider its decision on a waiver request only once.

(e) Examination Waiver Requirements and Criteria.

(1) For TBPG's Appointed Board to waive an examination, an applicant must:

(A) Meet all other qualifications for licensure (qualifying work experience, education, documentation relating to criminal, disciplinary, and civil litigation history);

(B) Meet the criteria in the policy for the specific examination that is the subject of the waiver request; and

(C) Have not failed the examination that is the subject of the waiver request.

(2) Work experience an applicant submits pursuant to the following examination waiver policies must meet the criteria for qualifying work experience under TBPG rule §851.23 regarding qualifying experience record.

(3) ASBOG® Fundamentals of Geology Examination Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualifying work experience;

(B) M.S. and 13 years qualifying work experience; [and]

(C) Ph.D. and 10 years qualifying work experience.

(4) ASBOG® Practice of Geology Examination Waiver. An applicant must meet minimum criteria in [Minimum Criteria (a person may qualify for a waiver by meeting)] either ["Generalized"] Practice Experience or ["Specialized"] Practice Experience. [;]

(A) Generalized practice experience (must meet all four criteria):

(i) Twenty (20) years of geosciences work experience;

(ii) Ten (10) years of supervisory experience (three or more individuals under supervision);

(iii) Coursework in six of the eight following ASBOG® task domains:

(I) Field geology;

(II) Mineralogy, petrology, and geochemistry;

(III) Sedimentology, stratigraphy, and paleontology [paleontology];

(IV) Geomorphology, surficial processes, and quaternary geology;

(V) Structure, tectonics, and seismology;

(VI) Hydrogeology;

(VII) Engineering geology; [and]

(VIII) Economic geology and energy resources.

(iv) Demonstrate the ability to plan and conduct geosciences investigations considering public health, safety, and welfare [human health and safety].

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the ASBOG® task domains. One factor TBPG will consider is whether the examination is irrelevant or largely beyond the scope of the applicant's specialized experience and the applicant's intended field of practice.

(5) Council of Soil Science Examination (CSSE) - Fundamentals of Soil Science Waiver. An applicant must have acquired one of the following combinations of education and work experience:

(A) B.S. and 15 years qualified work experience;

(B) M.S. and 13 years of qualified work experience; and

(C) Ph.D. and 10 years of qualified work experience.

(6) Council of Soil Science Examination (CSSE) - Professional Practice examination. An applicant must meet minimum criteria in either Generalized practice experience or Specialized practice experience[: No waiver is available.]

(A) Generalized practice experience (must meet all four criteria):

(i) Twenty (20) years of soil science work experience;

(ii) Ten (10) years of supervisory experience;

(iii) Coursework in six of the eight following CSSE Professional Practice Performance Objective (PPPO) domains:

(I) Soil chemistry;

(II) Soil mineralogy;

(III) Soil fertility and nutrient management;

(IV) Soil physics;

(V) Soil genesis and classification;

(VI) Soil morphology;

(VII) Soil biology and soil ecology; and

(VIII) Soil and land use management.

(iv) Demonstrate the ability to plan and conduct soil science investigations considering human health and safety.

(B) Specialized practice experience: The applicant demonstrates twenty years or more of specialized work history in only one or two of the CSSE PPPO domains. One factor TBPG will consider is whether the examination is irrelevant or largely beyond the scope of the applicant's specialized experience and the applicant's intended field of practice.

(7) Texas Geophysics Examination (TGE). No Waiver is available.

(f) Substitution of Work Experience for Educational Requirements. Before the Appointed Board considers an application for substitution of work experience for an education requirement, the applicant seeking approval of the substitution must meet all of the following minimum criteria:

(1) The applicant must pass, within three (3) attempts, the appropriate qualifying licensing examination (or a substantially similar examination), depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by ASBOG® [National Association of State Boards of Geology (ASBOG®)];

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE);

(2) The applicant must have at least 15 years of qualifying work experience;

(3) The applicant must demonstrate the following:

(A) Ability to work with others;

(B) Ability to apply scientific methods;

(C) Ability to solve problems;

(D) Honest and ethical behavior;

(E) Ability to communicate effectively; and

(F) Relevant continuing education activities that advance knowledge throughout the applicant's professional career.

(4) The applicant is highly encouraged to appear before the Application Review and Continuing Education Committee for presentation of qualifications.

(g) Waiver of Education Requirement - Generally. Before the Appointed Board considers an application for education waiver, the applicant seeking a waiver of the education requirement must demonstrate mastery of a minimum required knowledge base in geoscience by meeting the following criteria:

(1) The applicant must demonstrate both of the following:

(A) A four-year degree in a field of basic or applied science that includes at least 15 hours of courses in geosciences from an accredited institution of higher education or the equivalent of a total of at least 15 hours of courses in geoscience from an accredited institution of higher education and/or other educational sources, as determined by the Appointed Board;

(B) An established record of continuing education and workshop participation in geoscience fields; and

(C) The Appointed Board may also determine that an individual applicant has satisfactorily completed other equivalent educational requirements after reviewing the applicant's educational credentials.

(2) The applicant must have at least eight years of qualifying geoscience work experience;

(3) The applicant must pass the appropriate qualifying examination, depending on the discipline in which the applicant seeks to be licensed, as follows:

(A) Geology discipline: both the Fundamentals and Practice examinations administered by ASBOG® [National Association of State Boards of Geology (ASBOG®)];

(B) Geophysics discipline: the Texas Geophysics Examination (TGE); or

(C) Soil Science discipline: both the Fundamentals and Practice examinations administered by the Council of Soil Science Examiners (CSSE).

(h) Education Waiver for License in Geology Discipline - Fundamentals. An individual who plans to apply for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement for licensure may take the ASBOG® Fundamentals of Geology examination as long as the applicant:

(1) Has submitted any other necessary forms, documents, and fees; and

(2) Has acknowledged that the Appointed Board must approve an education waiver request or approve the substitution of experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request to substitute experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(i) Education Waiver for License in Geology Discipline - Practice. An applicant for licensure as a Professional Geoscientist in the discipline of geology who does not fully meet the education requirement

for licensure may take the ASBOG® Practice of Geology examination as long as the applicant:

- (1) Meets or is within six months of meeting the qualifying experience requirement for licensure;
- (2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);
- (3) Has submitted a request for an education waiver or a substitution of experience for education;
- (4) Has submitted any other necessary forms, documents, and fees; and
- (5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after both the ASBOG® Fundamentals of Geology and Practice of Geology examinations have been passed.

(j) **Education Waiver for License in Geophysics Discipline.** An applicant for licensure as a Professional Geoscientist in the discipline of geophysics who does not fully meet the education requirement for licensure may take the Texas Geophysics Examination as long as the applicant:

- (1) Meets or is within six months of meeting the qualifying experience requirement for licensure;
- (2) Submits the qualifying work experience claimed (or has verified qualifying work experience claimed through an alternate means, as provided by TBPG rules);
- (3) Has submitted a request for an education waiver or a substitution of experience for education;
- (4) Has submitted any other necessary forms, documents, and fees; and
- (5) Has acknowledged that the Appointed Board must approve the education waiver request or a request to substitute experience for education before the applicant may be licensed as a Professional Geoscientist and that the Appointed Board will not consider an education waiver or a request for substitution of experience for education until after the Texas Geophysics Examination has been passed.

§851.28. Professional Geoscientist License Renewal and Reinstatement.

(a) The Board staff will mail or e-mail a renewal notice to the last recorded address of each licensee, at least sixty (60) days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the licensee to pay the required renewal fee together with any applicable penalty at the time of payment. A licensee may renew a current license up to sixty (60) days in advance of its expiration. An expired license may be renewed within three years of the license expiration date.

(b) Upon the first renewal of a license, the licensure period will be prorated so that the new expiration date will be the last day of the licensee's birth month. The prorated renewal period will be for a minimum of four months and a maximum of fifteen months. Every subsequent expiration date shall be set for one year past the previous renewal date.

(c) A late penalty fee of \$50 will be charged for a complete renewal application and fee received or postmarked sixty-one (61) days after the licensee's expiration date.

(d) The Appointed Board may refuse to renew a license if the licensee is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of TBPG laws or rules that would warrant such disciplinary action under §851.157 of this chapter.

(e) A license that has been expired for sixty (60) days or less may be renewed by submitting a P.G. Renewal Application (Form B) and the annual renewal fee to the TBPG. The renewal fee for a license that is renewed within sixty (60) days of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(f) A license that has been expired for more than sixty (60) days and less than ten months from the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee, and the late penalty fee. The renewal fee for a license that is renewed for more than sixty (60) days and less than ten months of expiration is the fee that was in place at the time the license expired. The licensee must also submit a signed Statement of Affirmation (Form VII) indicating whether the licensee practiced as a P.G. when their license was expired. Information regarding unlicensed non-exempt public geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(g) A license that has expired for ten months or more but less than three years after the license expiration date may be renewed by submitting to the TBPG a P.G. Renewal Application (Form B), the annual renewal fee for each year missed plus the current year's renewal fee, and the late penalty fee. The licensee must also submit a signed Statement of Affirmation (Form VII), indicating whether the licensee practiced as a P.G. when the license was expired. If an applicant for renewal who has met the requirements for renewal has practiced as a P.G. with the license expired, the license shall be renewed. Information regarding unlicensed practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff.

(h) A license that is allowed to expire for a period of three years after the license expiration date is permanently expired and may not be renewed. The former licensee may re-apply for a new license as provided by the Act and applicable TBPG rules and will have to meet all licensure requirements in said Act and rules at the time of re-application.

(i) As per §1002.403 of the Act, the Appointed Board may suspend or revoke a license as disciplinary action against a licensee who is found censurable for a violation of the Act or rules.

(1) A license that has been suspended can be reinstated by the Board staff only if the suspended licensee complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in the Board Order that suspended the license.

(2) A license that has been revoked can be re-instated only if, by a majority vote, the Appointed Board approves reinstatement, given the applicant:

(A) Re-applies and submits all required application materials and fees;

(B) Successfully completes an examination in the required discipline of geoscience being sought for reinstatement if the applicant has not previously passed said examination; and

(C) Provides evidence to demonstrate competency and that future non-compliance with the statute and rules of the TBPG will not occur.

(j) Pursuant to Texas Occupations Code §55.002, a licensee is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the licensee provides adequate documentation, including copies of orders, to establish to the satisfaction of the Executive Director that the licensee failed to renew in a timely manner because the licensee was serving on active duty in the United States armed forces outside of Texas.

(k) The application fee is non-refundable.

§851.29. *Endorsement and Reciprocal Licensure.*

(a) Endorsement.

(1) Endorsement is the process whereby TBPG, based on review of evidence of having completed a requirement for licensure for an equivalent license in another jurisdiction, determines that the applicant has met a requirement for licensure as a Professional Geoscientist.

(2) An applicant for a Professional Geoscientist license who is currently or has been licensed or registered in the last ten years to practice a discipline of geoscience in Texas or another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country may be eligible to demonstrate having met all or some of the qualifications for licensure through endorsement.

(3) The Board staff will only consider documentation provided to the TBPG directly from a licensing authority that has issued a license to the applicant. It is the responsibility of the applicant to ensure that the licensing authority provides information to the TBPG and pays any associated costs.

(4) ~~For [in order for]~~ the Board staff to consider evidence supporting the endorsement of a licensing qualification, the applicant must ensure that his or her licensing authority provides:

(A) Verification that the license is current or was held in the past ten years from the date of application; and

(B) Verification of the specific requirements that were met ~~[in order]~~ to become licensed.

(5) Verification may be in the form of:

(A) A document signed by an authorized agent of the jurisdiction indicating the specific qualifications that were met ~~[in order]~~ to become licensed; and/or

(B) Copies of specific documents that were submitted to the licensing authority to document having met a specific requirement.

(6) The TBPG may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(b) Reciprocal Licensure.

(1) Licensure by reciprocity agreement.

(A) Licensure by reciprocity agreement is the process whereby an applicant for licensure as a Professional Geoscientist in Texas who is currently licensed as a Professional Geoscientist (or equivalent license) in another United States jurisdiction (state, commonwealth or territory, including the District of Columbia) or another country becomes licensed in Texas and the process whereby an applicant currently licensed as a Professional Geoscientist in Texas

applying for licensure as a Professional Geoscientist (or equivalent license) in the other jurisdiction becomes licensed in the other jurisdiction under the terms of a formal reciprocity agreement between the two jurisdictions.

(B) An applicant who holds a current license in a jurisdiction with which the TBPG has a reciprocity agreement may apply for licensure under the terms of the specific reciprocity agreement between the two jurisdictions.

(C) The TBPG shall maintain a list of each jurisdiction in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

(2) Licensure by similar examination. An individual who is licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who has applied for licensure as a Professional Geoscientist under this subsection may meet the licensing examination requirement by submitting proof of passage of examination(s) that is/are substantially similar to the applicable examination(s) as specified in §851.21 of this chapter.

(3) Licensure by recognition of licensed experience in another jurisdiction. An applicant for a Professional Geoscientist license who is currently licensed or registered to practice a discipline of geoscience in another United States jurisdiction (state, commonwealth, or territory, including the District of Columbia) or another country who was licensed without examination, i.e. "grandfathered"~~]; with regard to a licensing examination or who was licensed based on a licensing examination that is not recognized as substantially similar to the current licensing examination required for licensure under paragraph (2) of this subsection]~~ shall be deemed to have met the examination requirement upon verification of the following:

(A) Verification of a valid licensure in the other jurisdiction. The applicant requesting licensure under this subsection must be in good standing with the jurisdiction in which that individual holds their current license as a professional geologist or geoscientist;

(B) Verification of at least five (5) years of responsible professional geoscience work experience since the date of their initial licensure;

(C) Verification that licensure was maintained continuously (including sequential licensure, if a license was held in more than one jurisdiction) during the five (5) years prior to application with the TBPG;

(D) Verification of having met the education requirement for licensure; and

(E) Verification that no complaint is pending against the applicant, that no complaint against the applicant has been substantiated, and no disciplinary action has ever been taken against the applicant.

(4) The applicant seeking licensure under this subsection shall be responsible for contacting the jurisdiction(s) in which the applicant is currently licensed and all jurisdictions in which the applicant has ever been licensed and cause to have verification of information in subparagraphs (A) - (E) of paragraph (3) of this subsection submitted to TBPG.

§851.30. *Firm Registration.*

(a) Registration required. Unless an exemption applies, as outlined in Texas Occupations Code §1002.351(b), a firm ~~[or corporation]~~ may engage in the public practice of geoscience only if the firm is currently registered with the TBPG; and

(1) The geoscience services are performed by, or under the supervision of, a Professional Geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) The business of the firm includes the public practice of geoscience as determined by TBPB rule, and a principal of the firm or an officer or director of the corporation is a Professional Geoscientist and has overall supervision and control of the geoscience services performed in this state. As provided in §851.10(23) [§851.10(24)] of this chapter, the term Geoscience Firm (Firm) [firm] includes a sole practitioner registered with TBPB as a Geoscience Firm, a [sole proprietor registered as a Geoscience Firm,] co-partnership, corporation, partnership, limited liability company, joint stock association, or other business organization that is registered with the TBPB as a Geoscience Firm. For the purposes of this section, the term "public" includes, but is not limited to, political subdivisions of the state, business entities, and individuals. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) Unless registered by the TBPB or exempt from registration under Texas Occupations Code §1002.351 or elsewhere in this section, an individual or firm may not represent to the public that the individual or firm is a Professional Geoscientist or is able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Texas Occupations Code §1002.263(b).

(c) A currently licensed P.G. who offers services as a sole practitioner--either unincorporated or incorporated-- [~~an unincorporated sole proprietor~~] is exempt from the firm registration requirements in [under] this section provided that the sole practitioner does not employ, contract or subcontract with another person (full-time or part-time) to perform geoscience work for the sole practitioner. A P.G. who is exempt from the firm registration requirements under this section and who offers services under an assumed name must report the assumed name to the TBPB. A P.G. who is otherwise exempt from the firm registration requirements under this section may choose to register as a Geoscience Firm and pay the current Geoscience Firm registration fee.

(d) Registration requirements. To [~~In order to~~] be eligible to register as a Geoscience Firm, the firm must:

[(1) Affirm and demonstrate that the firm is an unincorporated sole proprietorship or another business entity that offers or performs work that includes the public practice of geoscience;]

(1) [(2)] Identify Authorized Official of a Firm who shall be responsible for submitting the application for the initial registration of the Firm [firm] with the TBPB; ensuring that the Firm [firm] maintains compliance with the requirements of registration; ensuring that the Firm [firm] renews its registration status as long as the Firm [firm] offers or provides professional geoscience services; ensuring that each geoscientist in the firm's employment who performs or supervises geoscience work maintains a current P.G. license [that the geoscientist is a currently licensed P.G.]; and communicating with the TBPB regarding any other necessary matter;

(2) [(3)] Operate under a business model such that:

(A) The geoscience services are performed by, or under the supervision of, a licensed Professional Geoscientist who is in responsible charge of the work and who ensures that the Geoscience Firm [firm] complies with all laws, codes, rules, and standards applicable to the public practice of geoscience and who signs and seals all geoscientific reports, documents, and other records as required by this chapter and ensures that all geoscientific reports, documents, and other

records are signed and sealed by a licensed Professional Geoscientist; or

(B) The principal business of the Geoscience Firm [firm] is the public practice of geoscience as determined by TBPB rule and a principal of the Geoscience Firm [firm] or an officer or director of the corporation is a licensed Professional Geoscientist and has overall supervision and control of the geoscience services the Geoscience Firm performs [performed] in this state;

(3) [(4)] Identify the firm's business model and the Professional Geoscientist who fulfills the role of the licensed Professional Geoscientist in paragraph (2) [(3)] of this subsection;

[(5) Unless the firm is an unincorporated sole proprietorship, a firm seeking registration with the TBPB must register the firm with the Office of the Secretary of State (SOS) and obtain a certificate of authority. If the firm operates under a name other than that which is filed with the SOS, an Assumed Name Certificate must be filed with the County Clerk. A firm's SOS certificate of authority number and all Assumed Name Certificate instrument numbers must be provided to the TBPB upon initial application. If the firm is a sole proprietorship and the firm operates under a name that does not include the last name of the individual sole proprietor, the firm shall file an Assumed Name Certificate with the County Clerk;]

(4) [(6)] Submit a Firm Registration Application (Form C), in accordance to the procedures outlined in subsection (e) of this section;

(5) [(7)] Upon initial application, affirm that the licensed Professional Geoscientist performing or supervising the geoscience services for the firm [a Geoscience Firm] is an employee, or affirm that the applicant is a sole proprietor who is a P.G. with no employees. A Geoscience Firm shall provide evidence of employment status upon request of the Board staff or an Appointed Board Member.

(e) Firm Registration Application Process.

(1) The Authorized Official of a firm shall complete and submit, along with the required application fee, the form furnished by the TBPB that [which] includes, but is not limited to, the following information listed in subparagraphs (A) - (F) [(E)] of this paragraph:

(A) The name, address, and phone number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(B) The name, position, address, and phone numbers of each officer or director;

(C) The name, address and current active Texas Professional Geoscientist license number of each employee performing geoscience services for the public in Texas on behalf of the firm;

(D) The name, location, and phone numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any;

(E) The federal employer identification number (EIN) for the firm, unless the firm is an unincorporated sole-practitioner; and

(F) [(E)] A signed statement attesting to the correctness and completeness of the application.

(2) After receiving [Upon receipt of] all of the required materials and fees, and after the firm has [having] satisfied the requirements in this section, TBPB will register the firm and will assign to the firm [the firm shall be registered and] a unique Geoscience Firm registration number [shall be assigned to the firm registration]. The new

firm registration shall expire at the end of the calendar month occurring one year after the firm registration is issued.

(3) An application is active for one year after the date that it is filed with the TBPG. An application expires on the one-year anniversary of the date it was filed with TBPG. [~~After one year an application expires.~~]

(4) Obtaining or attempting to obtain a firm registration by fraud or false misrepresentation is grounds for an administrative sanction and/or penalty.

(5) An application is [~~Applications are~~] not reviewed until the application and fee have been received in the TBPG office. TBPG will notify an applicant [~~Applicants are initially notified~~] of any deficiencies in the application.

(6) The applicant [~~Applicants~~] should respond, within forty-five (45) days, to a deficiency notice it receives from TBPG and should correct deficiencies within that time, if possible [~~within forty-five (45) days from the date of notification for applicants to correct deficiencies~~]. If an applicant does not respond to a deficiency notice or does not ensure that necessary documents are provided to the TBPG office, the application will expire, as scheduled, one year after the date it became active.

(f) The initial certificate of registration shall be valid for a period of one year from the date it is issued, plus any days remaining through the end of that month. A renewed firm registration is valid for a period of one year from the expiration date of the firm registration being renewed.

(g) A Geoscience Firm's completed and approved registration is the legal authority granted the holder to actively offer or practice professional geoscience upon meeting the requirements as set out in the Act and TBPG Rules. When a firm registration is issued, a firm registration wall certificate, the first firm registration certificate expiration card, and the first portable firm registration expiration card is provided to the new Geoscience Firm. The firm registration wall certificate shall bear the name of the Geoscience Firm [~~firm~~], the firm's unique Geoscience Firm registration number, and the date the firm registration was originally issued. The firm registration wall certificate is not valid proof of current registration as a firm, unless it is accompanied by the firm registration certificate expiration card and the date on the firm registration certificate card is not expired. The firm registration certificate expiration card shall bear the name of the firm, the firm's unique firm registration license number, and the date the firm registration will expire, unless it is renewed. The portable firm registration expiration card shall bear the name of the firm, the [~~firm's~~] unique Geoscience Firm registration number, and the date the registration will expire, unless it is renewed.

(h) At least sixty (60) days in advance of the date of the expiration, the Board staff shall notify each Geoscience Firm of the date of the expiration and the amount of the fee that shall be required for its annual renewal. The registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Appointed Board. It is the sole responsibility of the Geoscience Firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(i) A certificate of registration which has been expired for less than one (1) year may be renewed by completing a Firm Registration Renewal Application (Form D), along with an affirmation signed by the Authorized Official of a Geoscience Firm indicating whether professional geoscience services were offered, pending, or performed for the public in Texas when the Firm's [~~firm's~~] registration was expired, and payment of a \$50 late renewal penalty. If a Geoscience Firm [~~firm~~]

under application for late Firm [~~firm~~] registration renewal has met the requirements for renewal and has indicated that the geoscience services were offered, pending, or performed for the public in Texas while the Firm's [~~firm's~~] registration was expired, the Firm's [~~firm's~~] registration shall be renewed. An application for late renewal of a firm registration will not be rejected solely on the basis that the firm engaged in geoscience activity while the license was expired. Information regarding unregistered geoscience practice received under this section shall be referred to the enforcement division for appropriate action that could include the initiation of a complaint by the Board staff. A Firm [~~firm~~] registration that has been expired for more than one year is permanently expired and may not be renewed; a new application is required.

§851.31. Temporary P.G. License and Temporary Firm Registration.

(a) Temporary P.G. License. The TBPG may issue a temporary license to an applicant as described in §1002.258(a) of the Act.

(b) Temporary Firm Registration.

(1) The Board may issue a temporary license to a firm that is licensed or registered in another state or foreign country and wishes to engage temporarily in the public practice of geoscience in this state and that does not have an established place of business in this state.

(2) An applicant for a temporary firm registration must:

(A) Apply to the Board for a temporary firm registration;

(B) Provide proof of firm licensure or registration in another state or foreign country;

(C) Pay the appropriate fee listed in §851.80

(D) Include in the application the name and P.G. license number of the Professional Geoscientist licensed in Texas who will take Responsible Charge of the firm's geoscience work;

(E) Affirm and acknowledge that all signed and sealed work products must include the seal of the firm for the non-Texas jurisdiction in which the firm is licensed or registered, the temporary Texas firm registration number, and the expiration date of the temporary registration; and

(F) Affirm and acknowledge that the firm must submit or deliver the work product on or before the date the temporary registration expires.

(c) A temporary firm registration issued under subsection (b) of this section expires on the 90th day after the date of issuance.

§851.32. Continuing Education Program.

(a) Each licensee shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or

expand the skills and knowledge relevant to the licensee's field of practice.

(c) Every P.G. licensee is required to obtain 15 continuing education hours (PDH units) during a standard renewal period year (one year). The continuing education requirement for a license that is renewed for a period less than one year per §851.28(b) of this chapter shall be prorated.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of Professional Geoscientists, or review of the Texas Geoscientist Practice Act and TBPG rules.

(e) If a licensee exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

- (A) Serving as an elected or appointed official;
- (B) Serving on a committee of the organization; or
- (C) Serving in other official positions.

(8) Patents issued.

(9) Engaging in self-directed course work.

(10) Software programs published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section:

- (1) 1 College or unit semester hour--15 PDH.
- (2) 1 College or unit quarter hour--10 PDH.
- (3) 1 Continuing Education Unit (CEU)--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH.

(6) Each published paper or article--10 PDH and book--45 PDH.

(7) Active participation, as defined in subsection (f)(7) of this section, in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH.

(8) Each patent issued--15 PDH.

(9) Each software program published--15 PDH.

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit:

(1) The Appointed Board shall be the final authority with respect to whether a course or activity meets the requirements of this chapter.

(2) The Board staff shall not pre-approve or endorse any CEP activities. It is the responsibility of each licensee to use his/her best professional judgment by reading and utilizing the rules and regulations to determine whether all PDH credits claimed and activities being considered meet the continuing education requirement. However, a course provider may contact the Board staff for an opinion for whether or not a course or technical presentation would meet the CEP requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the licensee.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the licensee.

(7) Credit for activity described in subsection (h)(7) of this section requires that a licensee serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The licensee is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The licensee must submit CEP certification on the log and a list of each activity, date, and hours claimed that satisfy the CEP

requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

(l) CEP records for each licensee must be maintained for a period of three years by the licensee.

(m) CEP records for each licensee are subject to audit by the Board staff.

(1) Copies must be furnished, if requested, to the Board staff for audit verification purposes.

(2) If upon auditing a licensee, the Board staff finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience, the Board staff shall determine that the continuing education audit was not passed and refer the issue to the Enforcement Coordinator for appropriate action, which may include opening a complaint against the licensee for potential violations.

(n) A licensee may be exempt from the professional development educational requirements for a specific renewal period or periods for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New licensees that were licensed by passage of any part of the required licensing examinations shall be exempt for their first renewal period.

(2) A licensee serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A licensee employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) A licensee who is impacted by a long term physical disability or illness (of the licensee or a family member or other person) may be exempt.

(5) Supporting documentation must be furnished to the TBPG. The Executive Director shall review circumstances and documentation and make a decision. A licensee may appeal a decision of the Executive Director to an appropriate Committee or the full Appointed Board, as appropriate.

(o) A licensee may bring an expired license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 PDHs, including 2 PDHs of professional ethics, roles and responsibilities of Professional Geoscientists, then 30 PDHs (including 2 PDHs of ethics) shall be the maximum number of PDHs required.

(p) Noncompliance:

(1) If a licensee does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A licensee must submit the CEP certification log and supporting records for credits claimed not later than 30 days after the Board sends [by certified mail] an audit notification and request for a log and supporting documentation to the licensee's last known address

as shown by the Board's records. Failure to timely submit a CEP certification log and supporting records for credits claimed is grounds for disciplinary action.

(3) A licensee must satisfy CEP requirements. Failure to satisfy CEP requirements during the applicable period is grounds for disciplinary action.

(4) Falsely reporting that CEP requirements have been met for a renewal period is misconduct and will subject the licensee to disciplinary action.

§851.40. Geoscientist-in-Training (GIT).

(a) The GIT certification is intended for individuals who wish to express the intent to become a Professional Geoscientist while they are gaining qualifying geoscience work experience. Individuals who meet the educational requirements of §1002.255(a)(2)(A) of the Act and have successfully passed an examination as specified in §851.21 of this chapter are eligible to apply for GIT certification. This certification does not entitle an individual to practice as a licensed Professional Geoscientist.

(b) Upon accruing 5 years of post graduate geoscience work experience, individuals who are GIT certified and in good standing with the TBPG may apply for licensure as a Professional Geoscientist by submitting the following:

(1) TBPG Application for P.G. Licensure (Form A);

(2) The application fee as detailed in §851.80 of this chapter;

(3) The required evidence of qualifying work experience as described in §851.23 of this chapter; and

(4) Proof of having passed one of the following discipline specific examinations:

(A) ASBOG® [National Association of State Boards of Geology (ASBOG®)] Practice of Geology;

(B) Council of Soil Science Examiners (CSSE) Soil Science Practice Examination; or

(C) Texas Geophysics Examination.

§851.43. GIT Certification Period and Renewal.

(a) An initial GIT certification is valid for one year and may be renewed annually for a period of up to eight years. Renewals after the eighth year of certification will be granted at the discretion of the Appointed Board.

(b) A GIT certificate expires at the end of the month one year from the date of issuance, and can be renewed annually if the individual:

(1) Submits a GIT Certification Renewal Application (Form J) and pays the fee established by the Appointed Board;

(2) Accumulates eight or more Professional Development Hours (PDH) as described in §851.32 of this chapter throughout the prior certification year to include one hour of ethics training; and

(3) Remains in good standing with the TBPG.

(c) A GIT is exempt from the continuing education requirement during the first renewal period. The continuing education requirement must be met in subsequent renewals. [Upon the first renewal of a GIT certification, a GIT is exempt from the continuing education requirement.]

§851.85. Contingent Emergency/Disaster Response Actions.

(a) In the event of a declared emergency or disaster, the Executive Director may implement one or more temporary measures, as provided in this section, if the following conditions exist:

(1) The Governor of the State of Texas declares a disaster under Government Code, §418.014, or if the Executive Director determines that there is an emergency affecting the public health, safety, and welfare [health, safety, or welfare of the public]; and

(2) the Executive Director, in consultation with the TBPG Board Chairman, determines that enacting available temporary measures is necessary in the specified disaster or emergency area.

(b) Emergency Response Actions.

(1) Expiration dates for some or all license types may be extended. TBPG may extend the expiration date of a license as a Professional Geoscientist, a certification as a Geoscientist-in-Training, or a registration for a Geoscience Firm.

(2) Temporary suspension of certain fees. TBPG may temporarily suspend [waive] the regular fees for duplicate license certificates, duplicate wall or wallet license expiration cards, or certain license verifications during the period of time that TBPG deems appropriate to address the emergency or disaster.

(3) Continuing education requirements for the renewal of a license or certification may be temporarily suspended or deadlines extended.

(4) The issuance of an emergency license as a Professional Geoscientist, valid for one year and is not renewable. To be eligible for an emergency license as a Professional Geoscientist under this section, an applicant must:

(A) submit a completed application on the appropriate TBPG form;

(B) provide proof of licensure in good standing as a Professional Geoscientist or Professional Geologist in another U.S. state jurisdiction;

(C) follow all of the laws and rules applicable to the non-exempt public practice of geoscience in Texas, including the registration of a Geoscience Firm; and

(D) pay the application and one-year license fee for the license for which the applicant has applied and any other applicable fee.

(c) The Executive Director, in consultation with the TBPG Board Chairman, may implement all or some contingent emergency response actions available under this section, depending on the circumstances and overall needs of the State of Texas and TBPG's licensees.

(d) The Executive Director may take other reasonable administrative actions warranted by the circumstances including, but not limited to, suspension of certain complaint investigations and complaint case adjudication actions, extension of deadlines in certain Board orders, suspension of certain continuing education audits, or expedition of certain Professional Geoscientist license or Geoscience Firm applications.

(e) The Executive Director shall ensure that notifications of emergency measures taken are communicated to all members of the Appointed Board, all affected license holders, and the general public, to the extent that it is feasible and as soon as it is feasible. The Executive Director may use various methods including, but not limited to, posting notices to the agency website and sending e-mails, letters, or postcards.

(f) Actions taken by the Executive Director under this section are effective only until the next regular or special meeting of the Appointed Board. The Appointed Board shall review all actions taken by the Executive Director under this section at the next regular or special meeting of the Appointed Board. The Appointed Board shall take action to either continue the actions taken by the Executive Director under this section for a specified amount of time, with or without modifications; or to discontinue the actions taken by the Executive Director under 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.

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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 230-5576



22 TAC §851.83

STATUTORY AUTHORITY

These sections are proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; §1002.255, which authorizes the Board to establish license eligibility requirements; §1002.259, which authorizes the Board to waive certain requirements for licensure; §1002.261, which authorizes the Board to issue a license to applicants who meet the requirements of licensure; §1002.351, which authorizes the Board to regulate the public practice of geoscience by a firm or corporation; and §1002.352, which authorizes the Board to establish criteria for geoscientists-in-training.

These sections affect the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.253, 1002.254, 1002.255, 1002.256, 1002.257, 1002.258, 1002.259, 1002.261, 1002.262, 1002.301, 1002.302, 1002.351, and 1002.352.

§851.83. Certain Licensees Temporarily Exempt from Continuing Education Requirements.

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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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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SUBCHAPTER C. CODE OF PROFESSIONAL CONDUCT

22 TAC §§851.101 - 851.106, 851.108, 851.109, 851.111 - 851.113

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and §1005.153, which authorizes the Board to adopt a code of professional conduct that is binding on all license holders under this chapter.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.153.

§851.101. General.

(a) This subchapter is promulgated pursuant to the Act, Texas Occupations Code (TOC), §1002.153, which directs the Appointed Board to adopt a code of professional conduct that is binding on all license holders under the Act and provides that the Appointed Board may enforce the code by imposing sanctions, as provided by the Act or this chapter. Except as otherwise noted, this subchapter applies only to situations which are related to the practice of professional geoscience.

(b) Any person who holds a Professional Geoscientist (P.G.) license, is a Geoscience Firm, or who holds a certificate as a Geoscientist-in-Training (GIT) is responsible for understanding and complying with the Act, rules adopted by the Appointed Board, and any other law or rule pertaining to the practice of professional geoscience. Any person under application for, currently holding, or eligible to renew a license, registration, or certification issued by the Texas Board of Professional Geoscientists (TBPG) is bound by the provisions of the Act and this chapter. The TBPG maintains jurisdiction over a license, registration, or certification it issues as long as the license, registration, or certification is current or renewable.

(c) A P.G. [Professional Geoscientist], a [Geoscience] Firm, or a person who holds a certificate as a GIT [Geoscientist-in-Training] having knowledge of any alleged violation of the Act and/or TBPG rules shall cooperate with the TBPG in furnishing such information as may be required.

(d) A P.G. [Professional Geoscientist], a [Geoscience] Firm, or a person who holds a certificate as a GIT [Geoscientist-in-Training] shall timely answer all inquiries concerning matters under the jurisdiction of the TBPG and shall fully comply with final decisions and orders of the Appointed Board. Failure to comply with these matters shall constitute a separate offense of misconduct subject to the penalties provided under the Act or this Chapter.

(e) The Appointed Board may take disciplinary actions as provided in §1002.403 of the Act for reasons stated in §1002.402 of the Act.

(f) This subchapter is not intended to suggest or define standards of care in civil actions against P.G.s [Professional Geoscientists], GIT [Geoscientists-in-Training], or [Geoscience] Firms involving their professional conduct.

(g) A P.G. [Professional Geoscientist] or a [Geoscience] Firm may donate professional geoscience services to charitable causes but must adhere to all provisions of the TBPG Act and [the] rules for [of the TBPG in the provision of] all geoscience services rendered, regardless of whether the P.G. [Professional Geoscientist] or [Geoscience] Firm is paid for the geoscience services.

(h) A P.G. [Professional Geoscientist] or a GIT [Geoscientist-in-Training] who is presenting geoscientific fact testimony, including geoscientific interpretation, analysis, or conclusions, or recommend-

ing geoscientific work before any public body or court of law, whether under sworn oath or not, must adhere to all provisions of the Act and the rules of the TBPG in the provision of all professional geoscience services rendered, regardless of whether the P.G. [Professional Geoscientist] is paid for the service [or is providing such service on behalf of themselves or some other organization for which their services are provided at no cost].

§851.102. Competence/Negligence.

(a) A Professional Geoscientist or a Geoscience Firm shall undertake to perform a professional service only when the Professional Geoscientist or Geoscience Firm, together with those whom the Professional Geoscientist or Geoscience Firm shall engage as consultants, are qualified by education and/or experience in the specific technical areas involved. During delivery of a professional service, a Professional Geoscientist or Geoscience Firm shall act with reasonable care and competence and shall apply the technical knowledge and skill, which is ordinarily applied by reasonably prudent Professional Geoscientists practicing under similar circumstances and conditions.

(b) A Professional Geoscientist shall not affix his/her signature or seal to any document dealing with subject matter in which he/she is not qualified by education and/or experience to form a reasonable judgment.

(c) A Professional Geoscientist or a Geoscience Firm shall not engage in conduct or perform professional geoscience services characterized by Gross Incompetence ~~including~~ [- Conduct or professional geoscience services characterized by Gross Incompetence includes] work that evidenced an inability or lack of skill or knowledge necessary to discharge the duty and responsibility required of a Professional Geoscientist or Geoscience Firm;[-] or evidenced [by] an extreme lack of knowledge of, or an inability or unwillingness to apply, the principles or skills generally expected of[-] a reasonably prudent Professional Geoscientist or Geoscience Firm.

(d) A Professional Geoscientist who has been adjudicated mentally incompetent by a court may not renew a license or engage in activities requiring a license under the Act.

§851.103. Recklessness.

(a) A Professional Geoscientist or Geoscience Firm shall not practice geoscience in any manner that [which], when measured by generally accepted geoscience standards or procedures, does or is reasonably likely to result [or does result] in the endangerment of public health, [the] safety, [health], or welfare [of the public]. Such practice is deemed to be "reckless."

(b) "Recklessness" shall include the following practices:

(1) Conduct that indicates that the Professional Geoscientist or Geoscience Firm is aware of yet consciously disregards a substantial risk of such a nature that its disregard constitutes a significant deviation from the standard of care that a reasonably prudent Professional Geoscientist or Geoscience Firm would exercise under the circumstances;

(2) Knowing failure to exercise ordinary care and attention toward the intended result when a procedure, technique, material, or system is employed as a result of a decision made by the Professional Geoscientist or Geoscience Firm and such failure jeopardizes or has the potential to jeopardize public health, safety, or welfare; or

(3) Action which demonstrates a conscious disregard for compliance with a statute, regulation, code, ordinance, or recognized standard applicable to [the design or construction of] a particular project when such disregard jeopardizes or has the potential to jeopardize public health, safety, or welfare.

§851.104. *Dishonest Practice.*

(a) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not directly or indirectly perform an act, omit ~~[an act]~~ or allow an omission, make an assertion, or otherwise engage in a practice in such a manner as to:

- (1) Defraud;
- (2) Deceive; or
- (3) Create a misleading impression.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not advertise publicly or individually to a client or prospective client in a manner that is false, deceptive, misleading, inaccurate, incomplete, out of context, or not verifiable.

(c) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific government-funded ~~[government funded]~~ geoscience services.

(d) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not make any false, misleading, deceptive, fraudulent or exaggerated claims or statements about the services of an individual or organization, including, but not limited to, the effectiveness of geoscience services, qualifications, or products.

(e) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm learns that any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the geoscience services, qualifications or products have been made, the licensee shall take reasonable steps to correct the inappropriate claims. As appropriate, the Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm may notify the TBPG in writing about these claims.

(f) Professional Geoscientists and Geoscience Firms shall issue statements in an objective and truthful manner. Professional Geoscientists, Geoscientist-in-Training, and Geoscience Firms must make reasonable efforts to make affected parties aware of the concerns regarding particular actions or projects, and of the public health, safety, and welfare ~~[potential economic, environmental, and public safety]~~ consequences of geoscientific decisions or judgments that are overruled or disregarded.

(g) A Geoscience Firm that retains or hires others to advertise or promote the firm's practice remains responsible for the statements and representations made.

(h) A Geoscience Firm shall maintain a work environment that uses standard operating procedures and quality assurance/quality control standards related to the Geoscience Firm's practice to ensure that the Geoscience Firm protects the public health, safety, and welfare ~~[health, safety, property, and welfare of the public]~~.

§851.105. *Conflicts of Interest.*

(a) If a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm has any business association or financial interest that [which] might reasonably appear to influence the judgment of the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm in connection with the performance of a professional geoscience service, and thereby jeopardize an interest of a client or employer ~~[of the Professional Geoscientist, the Geoscientist-in-Training, or Geoscience Firm]~~, the P.G., GIT, or Firm ~~[Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm]~~ shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. Unless the client or employer provides written consent after full disclosure regarding the circumstances of the

business association or financial interest, the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall either terminate the business association or financial interest or forego the project or employment.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm is performing or has contracted to perform geoscience services.

§851.106. *Responsibility to the Regulation of the Geoscience Profession and Public Protection.*

(a) Professional Geoscientists, Geoscientists-in-Training, and Geoscience Firms shall be entrusted to protect the public in the practice of their profession.

(b) A Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm shall not:

(1) Knowingly participate, directly or indirectly, in any plan, scheme, or arrangement having as its purpose the violation of any provision of the Act or the rules of the TBPG;

(2) Aid or abet, directly or indirectly:

(A) Any unlicensed person in connection with the unauthorized practice of professional geoscience;

(B) Any business entity in the practice of professional geoscience unless carried on in accordance with the Act and this chapter; or

(C) Any person or any business entity in the use of a professional seal or other professional identification so as to create the opportunity for the unauthorized practice of geoscience by any person or any business entity.

(3) Fail to exercise reasonable care or diligence to prevent his/her partners, associates, shareholders, and employees from engaging in conduct that [which], if done by a Professional Geoscientist, a Geoscientist-in-Training, or Geoscience Firm, would violate any provision of the Act or the rules of the TBPG.

(c) A Professional Geoscientist or a Geoscientist-in-Training possessing knowledge of an Applicant's qualifications for licensure shall cooperate with the TBPG by timely responding in writing to the TBPG regarding those qualifications when requested to do so by the TBPG.

(d) A Professional Geoscientist shall be responsible and accountable for the care, custody, control, and use of his/her Professional Geoscientist seal, professional signature, and other professional identification. A Professional Geoscientist whose seal has been lost, stolen, or otherwise misused shall report the loss, theft, or misuse to the TBPG immediately upon discovery of the loss, theft, or misuse. The Executive Director may invalidate the license number of the lost, stolen, or misused seal upon the request of the Professional Geoscientist if the Executive Director deems it necessary.

(e) A Professional Geoscientist, a Geoscientist-in-Training, or an Authorized Official of a Firm shall remain mindful of his/her obligation to the profession and to protect public health, safety, and welfare and shall report to the TBPG known or suspected violations of the Act or the rules of the TBPG.

(f) A Professional Geoscientist or Geoscience Firm shall keep adequate records of geoscience services provided to the public for no less than five (5) years following the completion and final delivery of the service. Adequate records shall include, but not be limited to:

- (1) Documents that have been signed and sealed or would require a signature and a seal;
- (2) Relevant documentation that supports geoscientific interpretations, conclusions, and recommendations;
- (3) Descriptions of offered geoscience services;
- (4) Billing, payment, and financial communications; and
- (5) Other relevant records.

(g) Professional Geoscientists, a Geoscientists-in-Training, and Geoscience Firms must adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, ~~in order~~ to make informed recommendations and decisions.

§851.108. Criminal Convictions.

(a) The TBPG [Texas Board of Professional Geologists (TBPG)] will adhere to the provisions of Texas Occupation Code (TOC) Chapter 53 regarding the review of criminal convictions and certain deferred adjudications in regard to actions taken against an Applicant for a license or a license holder as a consequence of criminal conviction or certain deferred adjudications, as specified in TOC Chapter 53.

(b) Crimes directly related to the duties and responsibilities of a Professional Geoscientist include any crime that reflects a lack of fitness for professional licensure or a disregard of the standards commonly upheld for the practice of professional geoscience, such as the following:

- (1) Criminal negligence;
- (2) Soliciting, offering, giving, or receiving any form of bribe;
- (3) The unauthorized use of property, funds, or proprietary information belonging to a client or employer;
- (4) Acts relating to the malicious acquisition, use, or dissemination of confidential information related to geoscience; and
- (5) Any intentional violation as an individual or as a consenting person of any provision of the Act.

(c) Any license holder whose license has been revoked under the provisions of TOC 53 due to incarceration may apply for a new license upon release from incarceration.

§851.109. Substance Abuse.

(a) If in the course of a disciplinary proceeding, ~~it is found by~~ the Appointed Board finds that a Professional Geoscientist's abuse of alcohol or a controlled substance, as defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code, contributed to a violation of the TBPG Act or rules ~~[Act or the rules of the TBPG]~~, the Appointed Board may condition its disposition of the disciplinary matter on the Professional Geoscientist's completion of a rehabilitation program approved by the Department of State Health Services.

(b) A Professional Geoscientist's abuse of alcohol or a controlled substance that results in the impairment of the Professional Geoscientist's professional skill so as to cause or potentially cause a threat to the public health, safety, and welfare ~~[property, safety, health, or welfare of the public]~~ may be deemed "Gross Incompetency" and may be grounds for revocation or suspension of a Professional Geoscientist's license or other appropriate disciplinary actions provided by the Act.

(c) To ~~[In order to]~~ determine whether abuse of alcohol or a controlled substance contributed to a violation or whether the continued professional practice of a licensee is a threat to the public safety the Appointed Board may order an examination by one or more licensed health care providers authorized to provide diagnosis or treatment of substance abuse.

§851.111. Professional Geoscientists Shall Maintain Confidentiality of Clients.

(a) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law, rule or court order; or when those confidences, if left undisclosed, would constitute a threat or potential threat to public health, safety, and welfare ~~[the health, safety or welfare of the public]~~.

(b) A Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of another person.

(c) A Professional Geoscientist, GIT or Geoscience Firm shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the Professional Geoscientist's or Geoscience Firm's employees and associates.

§851.112. Required Reports to the TBPG.

(a) A Professional Geoscientist (P.G.), Geoscientist-in-Training (GIT), or a Geoscience Firm (Firm) shall make written reports to the TBPG office of changes to any of the following within thirty (30) days of the following, as applicable:

- (1) A description of and the effective date of the change;
 - (2) Physical or mailing address of record, electronic mail address, telephone or facsimile number, or other contact information (include P.G. license number and/or Firm number or GIT certificate number as applicable);
 - (3) Changes to a P.G. or GIT's employment (e.g. leaving a firm or starting employment with a new firm, etc.);
 - (4) Any changes in a firm's name (legal trade name or business entity name), the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, changes in operation including firm type, dissolution of the firm, branches or subsidiary offices of the firm that no longer offers to provide or is not providing professional geoscience services to the public in Texas;
 - (5) Professional Geoscientist(s) employed by the firm or leaving the firm;
 - (6) Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices;
 - (7) Employment status of the P.G.s of the firm;
- (A) Operation including dissolution of the firm or that the firm no longer offers to provide or is not providing professional geoscience services to the public in Texas; or

(B) Operation including addition or dissolution of branch and/or subsidiary offices.

(8) Notice as provided in subsection (d) of this section shall include, as applicable, the:

(A) Full legal trade or business name entity;

(B) The firm registration number;

(C) Telephone number of the business office;

(D) Name and license number of the license holder employed by or leaving the entity;

(E) Description of the change; and

(F) Effective date of this change.

(9) A criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee or Geoscientist-in-Training;

(10) The settlement of or judgment rendered in a civil or criminal lawsuit filed against the licensee or Firm relating to the P.G.'s or Firm's professional geoscience services; or

(11) Final disciplinary or enforcement actions against the P.G., GIT, or Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Appointed Board.

(d) A Firm that obtains a new certificate of authority from the Office of the Secretary of State or that files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.

{{(a) A Professional Geoscientist, Geoscientist-in-Training, or a Geoscience Firm shall make written reports to the TBPG office within thirty (30) days of the following; as applicable:}}

{{(1) Any changes in a firm's name, the Authorized Official of the Firm (AOF), the firm's owners, officers, or directors, Professional Geoscientist(s) employed by the firm, Professional Geoscientist(s) who serve as the P.G. in Responsible Charge for the firm or any branch offices, communication phone number(s) of the Authorized Official of the Firm or P.G.s, and any other changes as identified in §851.152 of this chapter;}}

{{(2) Any changes in an individual P.G.'s or Geoscientist-in-Training's (GIT's) mailing address or other contact information and any changes in employment status with a firm (e.g. leaving or starting employment with a current firm, any new additional place(s) of employment, etc.);}}

{{(3) The initiation of practice as any other type of firm, corporation, partnership (whether or not the partnership is an incorporated entity), or other business entity that requires registration by the TBPG to engage in the public practice of geoscience;}}

{{(4) The notification in paragraphs (1) - (3) of this subsection shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business office, effective date of this change, and reason for this notification

(changed employment or retired, firm went out of business or changed its name or location, etc.) and information regarding areas of practice within each employment or independent sole practitioner practice setting;}}

{{(5) A change of business phone number, an additional business phone number, or a change in the home phone number;}}

{{(6) A criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee or Geoscientist-in-Training;}}

{{(7) The settlement of or judgment rendered in a civil lawsuit filed against the licensee or Geoscience Firm relating to the Professional Geoscientist's or Geoscience Firm's professional geoscience services; or}}

{{(8) Final disciplinary or enforcement actions against the Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm taken by a licensing or certification body related to the practice of professional geoscience when known by the licensee.}}

{{(b) The information received under subsection (a) of this section may be used by the TBPG to determine whether a possible violation may have occurred.}}

{{(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the Appointed Board.}}

{{(d) A Geoscience Firm shall notify the TBPG in writing no later than thirty (30) days after a change in the business entity's:}}

{{(1) Physical or mailing address, electronic mail address, telephone or facsimile number, or other contact information;}}

{{(2) Officers or directors if they are the only Professional Geoscientists of the firm;}}

{{(3) Employment status of the Professional Geoscientists of the firm;}}

{{(4) Operation including dissolution of the firm or that the firm no longer offers to provide or is not providing professional geoscience services to the public in Texas; or}}

{{(5) Operation including addition or dissolution of branch and/or subsidiary offices.}}

{{(e) Notice as provided in subsection (d) of this section shall include, as applicable, the:}}

{{(1) Full legal trade or business name entity;}}

{{(2) The firm registration number;}}

{{(3) Telephone number of the business office;}}

{{(4) Name and license number of the license holder employed by or leaving the entity;}}

{{(5) Description of the change; and}}

{{(6) Effective date of this change.}}

{{(f) A Geoscience Firm that obtains a new certificate of authority from the Office of the Secretary of State or files a new Assumed Name Certificate with the County Clerk or the Office of the Secretary of State must provide the new instrument number to the TBPG within thirty (30) days of the action.}}

§851.113. Duty to abide by Board Order and timely pay administrative penalty.

(a) All persons who are the subject of a Board order shall abide by the terms of that order. Failure to abide by the terms of a Board order is grounds for disciplinary action.

(b) All persons who are assessed an administrative penalty must pay the administrative penalty not later than the 30th day after the date the Board's order becomes final or they must timely satisfy section 1002.454(b) of the Texas Occupations Code.

(c) Failure to timely pay an administrative penalty is grounds for disciplinary action. This subsection does not apply if a person timely complies with section 1002.454(b) of the Texas Occupations Code regarding staying the enforcement of the administrative penalty at issue.

(d) The Appointed Board may deny a person's request for a license, registration or certification, or the renewal of a license, registration, or certification if the person has failed to timely pay an administrative penalty.

(e) When a person pays money to the TBPG, the TBPG may first apply that money to outstanding administrative penalties owed by that person before applying it to any other fee or cost.

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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Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 230-5576



SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

22 TAC §§851.151 - 851.153, 851.156 - 851.159

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; under 1002.154, which authorizes the Board to enforce this chapter; under 1002.202, which authorizes the Board to accept or initiate a complaint; 1002.351, which authorizes the public practice of geoscience by a firm or corporation; 1002.402, which authorizes the Board to impose appropriate sanctions; 1002.403, which authorizes the Board to take certain disciplinary actions.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.202, 1002.351, 1002.402, 1002.403; 1002.454; and Texas Occupations Code, Chapter 53.

§851.151. General.

(a) The Appointed Board is charged with the responsibility of enforcing the Act. Through the TBPG, the Appointed Board enforces the requirement of licensure as specified in the Act, the requirement of Geoscience Firm registration as specified in the Act, and all other requirements in the Act, the Code of Professional Conduct and other TBPG rules under the authority of the Act. Unless the person is licensed by the TBPG, a person may not:

(1) Use the term "Licensed Professional Geoscientist,"^[1] "Professional Geoscientist,"^[2] or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) Otherwise represent to the public that the person is qualified to:

(A) Practice as a geoscientist; or

(B) Engage in the ~~[public]~~ practice of geoscience for the public, including individuals, corporations, governments or courts.

(b) When the TBPG discovers or is provided information that may indicate a violation of the Act or TBPG rules, the Board staff may initiate a complaint, as provided by TOC §1002.154. A member of the public may also submit a complaint, as provided by TOC §1002.154. For ~~[in order for]~~ a complaint to be initiated by the agency or for information received from the public to be considered a complaint, the information initiated by Board staff or provided by the public must meet the criteria for a complaint provided in TOC §1002.202.

(c) Before the Appointed Board suspends or revokes a license, the TBPG shall provide to the Respondent a notice of the proposed action, an opportunity to show compliance, and an opportunity for a hearing.

(d) When a contested action is taken by the Appointed Board, the Respondent shall be informed of the Respondent's rights in regard to filing for judicial review, as provided in the Administrative Procedure Act (Government Code, Chapter 2001).

§851.152. Firm Compliance.

(a) Unless registered with the TBPG or exempt from Firm ~~[firm]~~ registration requirements under TOC §1002.351, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscience services or prepare a geoscientific report, document, or other record that requires the seal of a Professional Geoscientist.

~~[(b) A business entity or sole proprietor that offers or is engaged in the non-exempt public practice of professional geoscience in Texas must register with the TBPG pursuant to the requirements of §851.30 of this chapter.]~~

(b) ~~[(e)]~~ The Appointed Board may revoke a certificate of registration that was obtained in violation of the Act and/or TBPG rules including, but not limited to, fraudulent or misleading information submitted in the application.

(c) ~~[(d)]~~ A business entity or sole practitioner ~~[sole proprietor]~~ that is not registered with the TBPG may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the ~~[non-exempt]~~ public practice of geoscience by using the terms:

(1) "Professional Geoscientist;"

(2) "licensed geoscientist;"

(3) "registered geoscientist;"

(4) "licensed Professional Geoscientist;"

(5) "registered Professional Geoscientist;" or

(6) any abbreviation or variation of those terms listed in paragraphs (1) - (5) of this subsection, or directly or indirectly use or cause to be used any of those terms in combination with other words.

(d) ~~[(e)]~~ The Appointed Board may revoke or suspend a ~~[Geoscience]~~ Firm's registration, place on probation a Firm ~~[firm]~~ whose registration has been suspended, reprimand a Geoscience Firm,

or assess an administrative penalty against a Geoscience Firm for a violation of any provision of TBPG rules or the Act by the Firm ~~[firm]~~ or any employee of the Firm ~~[firm]~~. The Appointed Board also may take action against an Applicant pursuant to §851.110 of this chapter.

§851.153. Professional Geoscientist Compliance.

Any Professional Geoscientist who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §851.152 of this chapter shall be subject to legal and disciplinary actions available to the Appointed Board. Professional Geoscientists shall perform or directly supervise the geoscience services of any subordinates, including GITs.

§851.156. Professional Geoscientist Seals and Geoscience Firm Identification.

(a) The purpose of the Professional Geoscientist's seal is to show that professional geoscience services were performed by a qualified licensed Professional Geoscientist and to identify the Professional Geoscientist who performed the geoscience services.

(b) The Professional Geoscientist seal shall be of the design shown in this subsection. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal). Computer-applied seals may be of a reduced size provided that the Professional Geoscientist's full name and license number are clearly legible. The Professional Geoscientist's name on the seal shall be the same name on the license certificate issued by the TBPG.
Figure: 22 TAC §851.156(b) (No change.)

(c) A Professional Geoscientist shall ~~[only]~~ seal only documents that contain geoscience services performed by or under the Professional Geoscientist's ~~[his/her]~~ direct supervision. Upon sealing, the Professional Geoscientist takes full professional responsibility for geoscience services that are provided through the sealed document.

(d) It shall be misconduct to knowingly sign or seal any geoscience document if its use or implementation may endanger the public health, safety, and welfare ~~[health, safety, or welfare of the public]~~.

(e) It shall be unlawful for a license holder whose license has been revoked, suspended, or has expired to sign or affix a seal on any document.

(f) All seals utilized by a license holder shall be capable of leaving a permanent ink or impression on the document.

(g) Electronically conveyed geoscience documents requiring a seal must contain an electronic seal and electronic signature. Such seals should conform to the design requirements set forth in this section.

(1) A Professional Geoscientist must employ reasonable security measures to make the document unalterable. The Professional Geoscientist shall maintain the security of his/her electronic seal and electronic signature. The following methods are allowed:

(A) The Professional Geoscientist may electronically copy the original hard copy of the document that bears his/her seal, original signature, and date and transmit this document in a secure electronic format.

(B) The Professional Geoscientist may create an electronic seal and electronic signature for use in transmitting geoscientific documents by making a secure electronic graphic of the Professional Geoscientist's ~~[his/her]~~ original seal and signature.

(2) The use of an electronically-generated signature is not allowed by changing the word processing font from a "normal text" to a signature/handwriting font.

(A) Shown below is a sample of an unauthorized electronically-generated signature using the Lucida Handwriting font.
Figure: 22 TAC §851.156(g)(2)(A) (No change.)

(B) Shown below is a sample of a digital image of a geoscientist's seal and original signature saved as a digital image (JPEG Format, for example).
Figures: 22 TAC 851.156(g)(2)(B) (No change.)

(h) Preprinting of blank forms with a Professional Geoscientist's seal is prohibited.

(i) Signature reproductions, including but not limited to, rubber stamps, decals or other replicas, and electronically-generated signatures shall not be used in lieu of the Professional Geoscientist's actual signature or a true digital graphic copy of the actual signature.

(j) A Professional Geoscientist shall take reasonable steps to ensure ~~[insure]~~ the security of the Professional Geoscientist's ~~[his/her]~~ physical or electronically-generated seals at all times. In the event of loss of a seal, the Professional Geoscientist will immediately give written notification of the facts concerning the loss to the Executive Director.

(k) Professional Geoscientists shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any geoscience document as outlined in subsection (l) of this section before such document is released from their control.

(l) Preliminary documents released from a P.G.'s ~~[their]~~ control shall identify the purpose of the document, the Professional Geoscientist(s) of record and the Professional Geoscientist license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.G. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(m) ~~[(h)]~~ The Professional Geoscientist shall sign, seal, and date the original title sheet or a signature page of geoscience documents, specifications, details, calculations, or estimates, and each sheet of maps, drawings, cross sections, or other figures representing geoscientific services carried out under the supervision of the geoscientist, regardless of size or binding.

(n) All unbound geoscience documents, including but not limited to, research reports, opinions, recommendations, evaluations, addenda, and geoscience software shall bear the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act, unless the geoscience service is exempt under §1002.252 of the Texas Occupations Code. Electronic correspondence of this type shall include an electronic signature as described in subsection (f) of this section or be followed by a hard copy containing the Professional Geoscientist's printed name, date, signature, and the designation "P.G." or other terms allowed under §1002.251 of the Act.

(o) ~~[(m)]~~ Geoscience services performed by more than one Professional Geoscientist shall be sealed in a manner such that all geoscience can be clearly attributed to the responsible Professional Geoscientist(s) ~~[Geoscientist or Professional Geoscientists]~~. When sealing plans or documents on which two or more Professional Geoscientists have worked, the seal of each Professional Geoscientist shall be placed on the plan or document with a notation describing the geoscience services done under each Professional Geoscientist's responsible charge.

(p) [(n)] Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original geoscience documents; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of documents containing geoscience services submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(q) [(o)] When a Professional Geoscientist elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

- (1) Individually sealed by the Professional Geoscientist; or
- (2) Specified on an integral design/title/contents sheet that bears the Professional Geoscientist's seal, signature, and date with a statement authorizing its use.

(r) [(p)] Alteration of a sealed document without proper notification to the responsible Professional Geoscientist is misconduct or an offense under the Act.

(s) [(q)] A license holder is not required to use a seal for a document for which the license holder is not required to hold a license under Texas Occupations Code, Chapter 1002.

(t) [(r)] All geoscience documents released, issued, or submitted by a licensee shall clearly indicate the Geoscience Firm name and registration number by which the Professional Geoscientist is employed. If the Professional Geoscientist is employed by a local, State, or Federal Government agency or a firm that is exempt from the requirement of registration under Texas Occupations Code, Chapter 1002, Subchapter H, then only the name of the agency or firm shall be required.

(u) [(s)] TBPG also considers a document to meet the sealing requirement if a reader or user of the document can determine that the original document is complete and unaltered from that which was subsequently placed under seal.

§851.157. Complaints and Confidentiality.

(a) Who may file a complaint. A complaint may be filed with the TBPG by a member of the public, a member of the Appointed Board, or by Board staff. Also, a state agency that becomes aware of a potential violation of the Act or a rule adopted by the Appointed Board may fulfill the requirements of the Act in Texas Occupations Code, §1002.207, by filing a formal complaint with the TBPG or providing the information relating to the potential violation in writing to Board staff.

(b) How to file a complaint. Complaints should be filed with the Secretary-Treasurer of the Appointed Board at the office of the TBPG or electronically through the TBPG's website. The TBPG provides a complaint form that should be used to file a complaint.

(c) Whom complaints may be filed against. A complaint may be filed against any person or entity who: holds a Professional Geoscientist license issued by the TBPG, is a registered Geoscience Firm, or holds a certificate as a Geoscientist-in-Training issued by the TBPG. A complaint may also be filed against a person or firm that is not licensed or registered with the TBPG alleging that the person or firm has engaged in the unlicensed or unregistered public practice or offering of geoscience services in Texas.

(d) A complaint must be filed within two (2) years of the event giving rise to the complaint. The event giving rise to the complaint is an event from which a concern with geoscience work completed becomes

apparent. Complaints filed after the above stated period will not be acted upon by the TBPG unless the Complainant can show good cause for the late filing.

(e) Complaints and investigations under this chapter are of two types:

- (1) Complaints received from a member of the public; and
- (2) Complaints and investigations that are initiated by the Board staff or an Appointed Board Member as a result of information that may indicate a violation that becomes known to the Board staff or an Appointed Board Member [and that may indicate a violation].

(f) A complaint from a member of the public must be:

- (1) In writing;
- (2) Sworn to by the person making the complaint; and
- (3) Submitted to the authorized staff deputy to the Secretary-Treasurer or electronically through the TBPG's internet website.
- (4) The Board staff shall accept a complaint regardless of whether the complaint is notarized.

(g) A complaint that is initiated by a member of the Board staff or an Appointed Board Member must be:

- (1) Made in writing; and
- (2) Signed by the person who became aware of information that may indicate a violation.

(h) Confidentiality.

(1) The TBPG shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed, which is the date that a notice of alleged violation (NOV) is issued.

(2) Information submitted to the TBPG that has not been filed as a complaint, and the identity of the person who submits the information, are not confidential.

(3) Confidential information from other state agency. The TBPG maintains confidentiality or privilege of any confidential information submitted by a state agency under Texas Occupations Code, §1002.207. A state agency will inform the TBPG of the confidentiality or privilege provisions applicable to the information in accordance with procedures agreed upon between the agencies. If Board staff opens a complaint based on information it has received, the information becomes a part of the complaint record and is subject to the confidentiality provisions in Texas Occupations Code, §1002.202, in addition to any other confidentiality provisions that may apply.

(4) If a complaint is determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the Executive Director and investigator, with Appointed Board approval, determine that the complaint:

- (A) Was made for the likely purpose of harassment; and
- (B) Does not demonstrate apparent harm to any person.

§851.158. Procedures.

Procedures generally. Except for a suspension under TOC §1002.403(3), the procedures for investigation and dispensation of complaints are as follows:

- (1) Staff action.

- (A) Verify that the complaint meets legal requirements;
- (B) Verify the identity of the complainant (if complaint is not notarized);
- (C) Open complaint and set up complaint record;
- (D) Review complaint for TBPG jurisdiction;
- (E) Review for imminent danger to the public health, safety, or welfare;
- (F) Prioritize complaint as required by TOC §1002.154;
- (G) Provide acknowledgement and notification to complainant;
- (H) Investigate complaint and complete confidential investigation report; and

(I) Dismiss [~~May dismiss~~], with or without advisement, complaints that are meritless, non-jurisdictional, or that do not involve a threat or potential threat to public health, safety, and welfare [~~public health or safety~~], with the exception of complaints that involve violations of the continuing education requirement.

(2) Complaint review team. Review complaint and investigation with the possible outcomes of:

- (A) Recommend to the Appointed Board that the complaint be dismissed (with or without non-disciplinary advisory or warning);
- (B) Refer the complaint back to staff for further investigation; or
- (C) Issue notice of alleged violation-proposed finding of violation and proposed disciplinary action.

(3) Notice of alleged violation.

(A) The notice of alleged violation will state the authority of the TBPG to enforce the Act and take disciplinary action, the facts or conduct alleged to warrant disciplinary action, identify the proposed disciplinary action, provide the opportunity for an informal conference to show compliance with all requirements of law, and provide the opportunity for a contested-case hearing.

(B) The notice of alleged violation will provide three options:

(i) Accept the proposed findings and proposed disciplinary action, and waive the right to an informal conference, contested-case hearing, and judicial review, by signing and returning the enclosed proposed Board order;

(ii) Request an informal conference and a contested-case hearing; ~~and~~

(iii) Request a contested-case hearing.

(C) Waiver and default.

(i) To proceed to issue a default order, the notice of alleged violation must state the following in capital letters in at least 12-point bold-face type: FAILURE TO TIMELY RESPOND TO THIS NOTICE BY TIMELY REQUESTING EITHER AN INFORMAL CONFERENCE AND A CONTESTED-CASE HEARING OR A CONTESTED-CASE HEARING WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION BEING GRANTED BY DEFAULT. YOU MUST RESPOND AND REQUEST A HEARING IN WRITING WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE OR YOU WAIVE YOUR RIGHT TO A HEARING.

(ii) Additionally, to proceed to issue a default order, the notice of alleged violation must also state the following: If you fail to request a hearing in writing within 30 days of receipt of this notice you will be deemed to have admitted the factual allegations in this notice, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iii) If a person fails to file a written request for a contested-case hearing within 30 days of receipt of the notice of alleged violation, the person will be deemed to have admitted the factual allegations in the notice of alleged violation, waived the opportunity to show compliance with the law, waived the right to a hearing, and waived objection to the recommended sanction.

(iv) If a person responds and waives the right to an informal conference and a contested-case hearing or fails to file a written request for either an informal conference and a contested-case hearing or a contested-case hearing within 30 days of receipt of the notice of alleged violation, the Board shall proceed to resolve the matter on an informal basis by issuing a default order.

(D) The TBPG may serve the notice of alleged violation by sending it to the person's last known address as shown by the TBPG's records.

(E) The notice of alleged violation shall be sent by first class or certified mail to the person's last known address as shown by the TBPG's records, and in addition should also be sent to the person's email address as shown by the TBPG's records.

(4) Informal conference.

(A) The informal conference will be informal and will not follow procedures for contested cases.

(B) The informal conference panel may be composed of Board staff and Appointed Board members. The panel may limit attendance and the time allotted for the informal conference.

(C) The informal conference is an opportunity for a person to show compliance with law. The person may speak and provide documents for the panel's consideration.

(D) The informal conference panel may recommend proposed action to be taken by the Appointed Board. The proposed action may be different from that stated in the notice of alleged violation.

(5) Contested-case hearing. If a person timely and properly requests a contested-case hearing, one shall be set at the State Office of Administrative Hearings.

(6) Board order. Except for dismissals, the Appointed Board should resolve complaints by order. The Board may accept or reject any proposed order. If a proposed order is rejected, the Appointed Board may among other things dismiss the complaint, direct Board staff to modify an order and propose the modified order for later consideration, or direct that the matter be set for a contested-case hearing.

(7) All disciplinary actions shall be permanently recorded. Except for private reprimands, all disciplinary actions shall be placed on the TBPG's website and made available upon request as public information.

§851.159. *Sanctions.*

(a) The Appointed Board may impose appropriate sanctions against a Professional Geoscientist, Geoscientist-in-Training, or Geoscience Firm, as applicable, for:

(1) The practice of fraud or deceit in obtaining a Professional Geoscientist license, Geoscientist-in-Training certification, or Geoscience Firm registration;

(2) Incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;

(3) Conviction of a license holder or GIT of a crime involving moral turpitude or a felony;

(4) The imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;

(5) The issuance of a cease and desist order or a similar sanction relating to, or arising out of, the public practice of geoscience;

(6) Using the seal of another license holder, or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;

(7) Aiding or abetting a person or firm in a violation of this chapter;

(8) The revocation or suspension of a license or firm registration, the denial of renewal of a license or registration, or other disciplinary action taken by a state agency, Board of registration, or similar licensing agency for Professional Geoscientists, Geoscientists-in-Training, Geoscience Firms, or a profession or occupation related to the public practice of geoscience;

(9) Practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or registered or qualified to practice geoscience if the person or firm is not licensed or registered under the Act or the person's firm or corporation does not employ a Professional Geoscientist as required under the Act; [or]

(10) Violating the Act, a rule adopted under the Act, including the Code of Professional Conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

(b) The Appointed Board may take the following disciplinary actions:

(1) Refuse to issue or renew a license;

(2) Permanently revoke a license;

(3) Suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the Appointed Board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;

(4) Issue a public or private reprimand to an applicant, a license holder, or an individual, or firm, ~~or corporation~~ practicing geoscience under this chapter;

(5) Impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, or firm, ~~or corporation~~ practicing geoscience under this chapter;

(6) Require that a license holder participate in a peer review program under rules adopted by the Appointed Board;

(7) Require that a license holder obtain remedial education and training prescribed by the Appointed Board;

(8) Impose probation on a license holder requiring regular reporting to the Appointed Board;

(9) Require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, or firm, ~~or corporation~~ practicing geoscience under the Act;

(10) Impose an appropriate administrative penalty as provided by TOC Chapter 1002, Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under the Act; [or]

(11) Issue a cease and desist order.

(c) Allegations and disciplinary actions will be set forth in the final order and the severity of the disciplinary action will be based on the factors listed in paragraphs (1) - (9) of this subsection:

(1) The seriousness of the acts or omissions;

(2) The number of prior disciplinary actions taken against the respondent;

(3) The severity of penalty necessary to deter future violations;

(4) Efforts or resistance to correct the violations;

(5) Any hazard to the public health, safety, and welfare [~~health, safety, property or welfare of the public~~];

(6) Any actual damage, physical or otherwise, caused by the violations;

(7) Any economic benefit gained through the violations;

(8) The economic harm to property or the environment caused by the violation; [or]

(9) Any other matters impacting justice and public welfare.

(d) The Appointed Board shall consider the following factors in determining the amount of an administrative penalty assessed by the Appointed Board:

(1) An administrative penalty shall not exceed the dollar amount specified in the Act for each violation. Each day a violation continues is a separate violation for the purposes of imposing a penalty.

(2) The amount of an administrative penalty shall be based on:

(A) The seriousness of the violation, including:

(i) The nature, circumstances, extent, and gravity of any prohibited acts; and

(ii) The hazard or potential hazard created to the public health, safety, and welfare [~~health, safety, or economic welfare of the public~~];

(B) The economic harm to property or the environment caused by the violation;

(C) The history of previous violations;

(D) The disciplinary action or amount of administrative penalty necessary to deter a future violation;

(E) Efforts or resistance to correct the violation; and

(F) Any other matter that justice may require.

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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Rene Truan
Executive Director
Texas Board of Professional Geoscientists
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For further information, please call: (512) 230-5576



22 TAC §851.154

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties; under 1002.154, which authorizes the Board to enforce this chapter; under 1002.202, which authorizes the Board to accept or initiate a complaint; 1002.351, which authorizes the public practice of geoscience by a firm or corporation; 1002.402, which authorizes the Board to impose appropriate sanctions; 1002.403, which authorizes the Board to take certain disciplinary actions.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151, 1002.154, 1002.202, 1002.351, 1002.402, 1002.403; 1002.454; and Texas Occupations Code, Chapter 53.

§851.154. Loan Default Ground for Nonrenewal of License.

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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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 230-5576



SUBCHAPTER E. HEARINGS--CONTESTED CASES AND JUDICIAL REVIEW

22 TAC §§851.203, 851.204, 851.220

STATUTORY AUTHORITY

This section is proposed under the Texas Geoscience Practice Act, Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state; 1002.404, which authorizes a person's right to a hearing.

This section affects the Texas Geoscience Practice Act, Occupations Code §§1002.151 and 1002.404.

§851.203. Defaults.

(a) The Appointed Board may serve the notice of hearing on the respondent by sending it to his or her last known address as shown by the TBPG's records.

(b) Default. If the party who does not have the burden of proof fails to appear at a contested-case hearing at the State Office of Administrative Hearings, the administrative law judge may issue a default proposal for decision that can be adopted by the Appointed Board.

(c) Failure to issue default proposal for decision. If the administrative law judge grants a default but does not issue a default proposal for decision and instead issues an order dismissing the case or remanding the case back to TBPG and returning the file to the TBPG for informal disposition on a default basis in accordance with section 2001.056 of the Texas Government Code, the allegations in the notice of hearing will be deemed as true and proven, and the Appointed Board will issue a final order imposing a sanction requested in the notice of hearing.

(d) Failure to prosecute. If an applicant for licensure fails to appear at a contested case hearing at the State Office of Administrative Hearings, the administrative law judge must dismiss the case for want of prosecution, any relevant application will be withdrawn, and the TBPG may not consider a subsequent application from the party until the first anniversary of the date of dismissal of the case at the State Office of Administrative Hearings. If the administrative law judge dismisses the case and returns the file to the Appointed Board for informal disposition on a default basis in accordance with §2001.056 of the Texas Government Code, the Appointed Board will issue a final order referring to this rule and advising the applicant that the application was withdrawn and the applicant may reapply for licensure one year after the date the Appointed Board signs the final order.

(e) Applicants for licensure bear the burden to prove fitness for licensure.

(f) Contesting a final order issued following a default or dismissal for failure to prosecute. In the event that the respondent or applicant wishes to contest a final order issued following a default or dismissal for failure to prosecute, the respondent or applicant must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

- (1) the default was neither intentional nor the result of conscious indifference;
- (2) the respondent or applicant has a meritorious case or defense;
- (3) a new hearing will not harm [the] TBPG; and
- (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case in the movant's favor.

§851.204. Costs of Administrative Hearings.

(a) If a person files a suit for judicial review of an agency decision in a contested case, the TBPG shall request that the contested-case hearing be transcribed.

(b) Costs. The costs of transcribing the contested-case hearing and preparing the record for appeal in a suit for judicial review shall be paid by the party who appeals to district court.

(c) Documentation of costs. Documentation supporting the costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal shall be included in the administrative record or filed with the court.

(d) Recovery as court costs. The costs of transcribing the testimony in a contested-case proceeding and preparing the record for appeal in a suit for judicial review may be recovered as court costs.

(e) Additionally and alternatively, failure to timely pay the cost of transcribing the contested-case hearing is grounds for disciplinary action, and payment of the cost of transcribing the contested-case hearing is due no later than 60 days after the TBPG sends a request for payment and copy of the documentation of costs to the respondent's

last known address as shown by the TBPG's records or to the respondent's attorney, if any.

(f) The TBPG may deny a person's request to issue or renew a license, registration, or certification if the person has failed to pay the cost of transcribing the contested-case hearing.

(g) When a person pays money to the TBPG, the TBPG may first apply that money to outstanding transcript costs owed by that person before applying it to any other fee or cost.

§851.220. Judicial Review Procedures.

(a) A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with chapter 2001 of the Texas Government Code.

(b) The motion for rehearing may be filed by mail to the Board's mailing address, in person at the Board's street address, or by fax to the Board's fax number.

(c) Standard for rehearing following a default dismissal. In the event that the respondent wishes to contest a final order issued following a default, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

- (1) the default was neither intentional nor the result of conscious indifference;
- (2) the respondent has a meritorious defense;
- (3) a new hearing will not harm TBPG [~~the Board~~]; and
- (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious defense.

(d) Standard for rehearing following a dismissal for failure to prosecute. In the event that the applicant wishes to contest a final order issued following a dismissal for failure to prosecute, the respondent must timely file a motion for rehearing as provided by Chapter 2001 of the Texas Government Code, and the motion for rehearing must show the following:

- (1) the dismissal for failure to prosecute was neither intentional nor the result of conscious indifference;
- (2) the applicant has a meritorious application;
- (3) a new hearing will not harm TBPG [~~the Board~~]; and
- (4) the motion for rehearing must be supported by affidavits and documentary evidence of the above and show a prima facie case for a meritorious application.

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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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG SUBCHAPTER A. PRESCRIPTION DRUG PRICE DISCLOSURE

25 TAC §§229.1 - 229.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§229.1 - 229.4, concerning Prescription Drug Price Disclosure.

BACKGROUND AND PURPOSE

In 2019, House Bill (H.B.) 2536 created Texas Health and Safety Code Chapter 441 and required drug manufacturers to report the wholesale acquisition cost of all United States Food and Drug Administration-approved drugs sold in or into Texas. Manufacturers were also required to report on price increases exceeding a certain threshold compared to prices at certain time frames, and manufacturers were required to provide reasons for the price increase on the HHSC website. No rules were developed.

The proposed new sections are necessary to comply with H.B. 1033, 87th Legislature, Regular Session, 2021, that amended Texas Health and Safety Code, Chapter 441. H.B. 1033 requires prescription drug manufacturers to report certain cost data and price increases for prescription drugs. The promulgation of rules allows DSHS to administer fines for failure to disclose price increases. The proposed new rules specify the fee of \$250 that is required when drug manufacturers submit each report.

SECTION-BY-SECTION SUMMARY

New §229.1, Purpose, provides the purpose of the subchapter that establishes the procedures for Prescription Drug Price Disclosure.

New §229.2, Definitions, adds the following definitions for "Department," "Calendar Year," "Exclusivity," "Patent," and "Patent Exclusivity."

New §229.3, Fee, provides specifics on the amount of fee and time frame for submission. A reporting fee of \$250 is submitted with each report.

New §229.4, Administrative Penalties, details the assessment of penalties for failure to follow reporting requirements. Subsection (a) provides that the department shall assess penalties in accordance with Texas Health and Safety Code Chapter 441, this proposed new subchapter, Texas Government Code Chapter 2001, and the department's hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures). Subsection (b) provides the criteria for the assessment of administrative penalties that includes the Pharmaceutical Drug Manufacturer's previous violations, the seriousness of the violation, the Pharmaceutical Drug Manufacturer's demonstrated good faith, and any other matters as justice may require. Subsection (c) provides that each day a violation continues may be considered a separate violation.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing and administering the rules does have foreseeable implications relating to additional cost and revenue to state

government. DSHS does not anticipate a cost to local governments from the implementation of the rules.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$756,670 in fiscal year (FY) 2022; \$701,032 in fiscal year FY 2023; \$422,020 in FY 2024; \$422,563 in FY 2025; and \$423,124 in FY 2026; and an estimated increase in revenue of \$756,670 in fiscal year (FY) 2022; \$701,032 in fiscal year FY 2023; \$422,020 in FY 2024; \$422,563 in FY 2025; and \$423,124 in FY 2026.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS 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 create new DSHS employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to DSHS;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules; and
- (7) the proposed rules will not change the number of individuals subject to the rules.

DSHS has insufficient information to determine the effect of the proposed rules on the state's economy.

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

Donna Sheppard 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 are necessary to protect the health, safety, and welfare of the residents of Texas; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Luis Morales, Interim Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be transparent and efficient reporting of prescription drug prices and compliance actions resulting from the development of the rules.

Donna Sheppard 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 collection fee is minimal with prescription drug manufacturers.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Megan Snyder, Drugs and Medical Devices Branch, P.O. Box 149347, Mail Code 1987, Austin, Texas 78714-9347; or by e-mail to dmd.regulatory@dshs.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 at 8407 Wall Street, Austin, Texas 78754 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 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 Rules 21R130" in the subject line.

STATUTORY AUTHORITY

The proposed new rules are authorized by Texas Health and Safety Code §§441.0003, 441.0055, and 441.0102, and 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 service agencies, by DSHS, and for the enforcement of Texas Health and Safety Code, Chapter 441.

The proposed new rules will implement Texas Health and Safety Code, Chapter 441, and Texas Government Code, Chapter 531.

§229.1. Purpose.

This subchapter provides the minimum standards for submission of prescription drug price data.

§229.2. Definitions.

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

(1) Department--Department of State Health Services.

(2) Calendar year--January 1 through December 31 of each year.

(3) Exclusivity--A Federal Drug Administration (FDA) granted delay on approval of competitor drugs that attaches upon FDA's approval of a drug.

(4) Patent--A property right issued by the United States Patent and Trademark Office to exclude others from making, using, offering for sale, or selling an invention for a limited time.

(5) Patent exclusivity--Rights resulting from a drug manufacturer holding an unexpired patent, or exclusivity, or both.

§229.3. Fee.

This subchapter applies to all prescription drug manufacturers reporting drug price information. A fee of \$250 shall be submitted with each submitted annual report and price increase report.

§229.4. Administrative Penalties.

(a) The department shall assess administrative penalties in accordance with the requirements of:

(1) Texas Health and Safety Code Chapter 441;

(2) this subchapter;

(3) Texas Government Code, Chapter 2001; and

(4) the department's formal hearing procedures in §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(b) The department shall assess administrative penalties based upon one or more of the following criteria:

(1) the Pharmaceutical Drug Manufacturer's previous violations;

(2) the seriousness of the violation;

(3) the Pharmaceutical Drug Manufacturer's demonstrated good faith; and

(4) any other matters as justice may require.

(c) Each day a violation continues may be considered a separate violation.

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-202103989

Scott A. Merchant

Interim General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6755



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The Texas Department of Insurance proposes amendments to 28 TAC §21.4901 and §21.4903, concerning disclosures by out-of-network providers, and 28 TAC §21.5002 and §21.5003, concerning out-of-network claim dispute resolution. The amendments implement House Bill 3924, 87th Legislature, 2021.

EXPLANATION. The amendments to §§21.4901, 21.4903, 21.5002, and 21.5003 are necessary to implement HB 3924 and Insurance Code Chapter 1275. HB 3924 allows a nonprofit agricultural organization under Chapter 1682 to offer a health benefit plan. These health benefit plans are subject to the requirements of Insurance Code Chapter 1275, which create similar requirements for out-of-network billing that already exist for Health Maintenance Organizations (HMOs) and Preferred Provider Benefit Plans (PPOs), as well as for health benefit plans administered by Employees Retirement System of Texas (ERS) and Teacher Retirement System of Texas (TRS) plans under Insurance Code Chapters 1551, 1575, and 1579.

The proposed amendments to the sections are described in the following paragraphs.

Section 21.4901. The amendment to §21.4901 adds citations to Insurance Code §1275.052 and §1275.053 to the list of Insurance Code sections interpreted and implemented by 28

TAC Chapter 21, Subchapter OO. These Insurance Code sections, which address out-of-network facility-based provider payments and out-of-network diagnostic imaging provider or laboratory service provider payments, respectively, are similar to the parallel sections in the rule that refer to requirements for HMOs and PPOs, and TRS and ERS plans.

Section 21.4903. The amendment to §21.4903 adds citations to Insurance Code §1275.052 and §1275.053 to the list of sections addressed in the explanation of the meaning of "balance bill" for the purposes of the section.

Section 21.5002. The amendment to §21.5002 adds new Insurance Code Chapter 1682 to the scope of the subchapter. Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which this chapter applies is an administrator for purposes of that chapter.

Section 21.5003. The amendments to §21.5003 modify the definition of "administrator" and "health benefit plan" to include plans offered under Chapter 1682, to conform with HB 3924.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Cindy Wright, director of Consumer Protection and Services, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections other than that imposed by the statute. Ms. Wright made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

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

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Wright expects that administering the proposed amendments will have the public benefit of ensuring that the department's rules conform to HB 3924 and Insurance Code Chapter 1275, allowing for the mediation and arbitration of certain out-of-network health claims.

Ms. Wright expects that the proposed amendments will not increase the costs of compliance with Insurance Code Chapter 1275 or 1467 because they do not impose requirements beyond those in the statute. Insurance Code Chapter 1275 requires out-of-network claim dispute resolution for plans offered by nonprofit agricultural organizations under Insurance Code Chapter 1682. As a result, the costs associated with complying with the process do not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. Because the proposed amendments are designed to implement Insurance Code §§1275.003, 1275.004, 1275.051, 1275.052, and 1275.053, any economic impact results from the statute itself. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose possible costs on regulated persons. No

additional rule amendments are required under Government Code §2001.0045 because all possible costs would result from the statute, and these amendments are necessary to implement legislation. The proposed amendments implement Insurance Code §§1275.003, 1275.004, 1275.051, 1275.052, and 1275.053.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed amendments are in effect, the proposed amendments:

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

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on November 22, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on November 22, 2021. If the department holds a public hearing, the department will consider written comments received and those presented at the hearing.

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4901, §21.4903

STATUTORY AUTHORITY. The department proposes amendments to §21.4901 and §21.4903 under Insurance Code §§1275.004, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which Chapter 1275 applies is an administrator for purposes of Chapter 1467.

Insurance Code §1467.003 provides that the Commissioner adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

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

CROSS-REFERENCE TO STATUTE. Section 21.4901 and §21.4903 implement Insurance Code §§1275.004, 1275.052 and 1275.053.

§21.4901. Purpose and Applicability.

(a) The purpose of this subchapter is to interpret and implement Insurance Code §§1271.157, 1271.158, 1275.052, 1275.053, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

(b) Section 21.4903 of this title is only applicable to a covered nonemergency health care or medical service or supply provided by:

(1) a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(2) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

§21.4903. Out-of-Network Notice and Disclosure Requirements.

(a) For purposes of this section a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health benefit plan, as specified in Insurance Code §§1271.157(c), 1271.158(c), 1275.052(c), 1275.053(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State on October 8, 2021.

TRD-202103998

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 676-6584



SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5002, §21.5003

STATUTORY AUTHORITY. The department proposes amendments to §21.5002 and §21.5003 under Insurance Code §§1275.003, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.003 provides that the Commissioner adopt rules advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Chapter 1275 applies, and the administrator of a health benefit plan to which this chapter applies is an administrator for purposes of that chapter.

Insurance Code §1467.003 provides that the Commissioner adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

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

CROSS-REFERENCE TO STATUTE. Section 21.5002 and §21.5003 implement Insurance Code §1275.004.

§21.5002. Scope.

(a) This subchapter applies to a qualified mediation claim or qualified arbitration claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans), including an exclusive provider benefit plan;

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters 1551 (concerning Texas Employees Group Benefits Act), 1575 (concerning Texas Public School Employees Group Benefits Program), [ø] 1579 (concerning Texas School Employees Uniform Group Health Coverage), or 1682 (concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations); or

(3) offered by an HMO operating under Insurance Code Chapter 843 (concerning Health Maintenance Organizations).

(b) This subchapter does not apply to a claim for health benefits that is not a covered claim under the terms of the health benefit plan coverage.

(c) Except as provided in §21.5050 of this title (relating to Submission of Information), this subchapter applies to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2020. A claim for health care or medical services or supplies provided before January 1, 2020, is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose.

§21.5003. Definitions.

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

(1) Administrator--Has the meaning assigned by Insurance Code §1467.001 (concerning Definitions). The term also includes a nonprofit agricultural organization under Chapter 1682 offering a health benefit plan.

(2) Arbitration--Has the meaning assigned by Insurance Code §1467.001.

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies, provided that the care, services, or supplies:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of

time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Diagnostic imaging provider--Has the meaning assigned by Insurance Code §1467.001.

(5) Diagnostic imaging service--Has the meaning assigned by Insurance Code §1467.001.

(6) Emergency care--Has the meaning assigned by Insurance Code §1301.155 (concerning Emergency Care).

(7) Emergency care provider--Has the meaning assigned by Insurance Code §1467.001.

(8) Enrollee--Has the meaning assigned by Insurance Code §1467.001.

(9) Facility--Has the meaning assigned by Health and Safety Code §324.001 (concerning Definitions).

(10) Health benefit plan--A plan that provides coverage under:

(A) a health benefit plan offered by an HMO operating under Insurance Code Chapter 843;

(B) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Insurance Code Chapter 1301 (concerning Preferred Provider Benefit Plans); or

(C) a plan, other than an HMO plan, under Insurance Code Chapters 1551, 1575, [ø] 1579, or 1682.

(11) Facility-based provider--Has the meaning assigned by Insurance Code §1467.001.

(12) Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841 (concerning Life, Health, or Accident Insurance Companies); 842 (concerning Group Hospital Service Corporations); 884 (concerning Stipulated Premium Insurance Companies); 885 (concerning Fraternal Benefit Societies); 982 (concerning Foreign and Alien Insurance Companies); or 1501 (concerning Health Insurance Portability and Availability Act), that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan, including an exclusive provider benefit plan, under Insurance Code Chapter 1301.

(13) Mediation--Has the meaning assigned by Insurance Code §1467.001.

(14) Mediator--Has the meaning assigned by Insurance Code §1467.001.

(15) Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by an out-of-network provider or a non-network provider.

(16) Out-of-network provider--Has the meaning assigned by Insurance Code §1467.001.

(17) Party--Has the meaning assigned by Insurance Code §1467.001.

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 October 8, 2021.
TRD-202103999



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 61. TERMS AND PHRASES

34 TAC §61.1

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 61, concerning Terms and Phrases, by amending §61.1 (Definitions).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Section 61.1, concerning Terms and Phrases (Definitions), is proposed to be amended in order to clarify the rule and its interaction with other rules and statutes and to enhance public understanding of the rule.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
- (5) the proposed amendments will not create a new rule or regulation;
- the proposed amendments will not expand, limit, or repeal an existing rule or regulation;
- (6) the proposed amendments will not increase or decrease the number of individuals subject to the rule's applicability; and
- (7) the proposed amendments will not positively or adversely affect the state's economy.

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rule reflect clarifications of the intent of the rule and its interaction with other rules and statutes,

as well as an enhanced public understanding of the rule. The proposed amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting and complying with the rule is to clarify public understanding of the agency's administration of the rule.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at Cynthia.hamilton@ers.texas.gov. The deadline for receiving comments is Monday, November 22, 2021, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§61.1. Definitions.

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

- (1) Contributory service--Service for which all necessary deposits were made with and are being held by the system [System].
- (2) System--The Employees Retirement System of Texas.
- (3) Trustees, board, or board [Board] of trustees [Trustees]-The board [Board] of trustees [Trustees] of the Employees Retirement System of Texas.
- (4) Year--The state fiscal year.
- (5) Interested person [Person]--Any member of the system; any beneficiary or survivor of a system member; any retiree of the system; any guardian, administrator, or executor of a system member, retiree, or beneficiary; and [or] any state agency employing system members.

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 October 11, 2021.

TRD-202104006
Cynthia C. Hamilton
Acting General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: November 21, 2021
For further information, please call: (877) 275-4377



CHAPTER 63. BOARD OF TRUSTEES

34 TAC §§63.1, 63.3 - 63.5, 63.7, 63.9, 63.13, 63.15, 63.17, 63.19

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter

63, concerning Board of Trustees, by amending §63.1 (Duties of the Board of Trustees), §63.3 (Election of Trustees (Nomination Process)), §63.4 (Election of Trustees (Ballot)), §63.5 (Rulemaking Procedure), §63.7 (Public Comment to the Board of Trustees), §63.9 (Officers), §63.13 (Committees), §63.15 (Roberts Rules of Order), §63.17 (Advisory Committees), and §63.19 (Standard of Conduct for Financial Advisors and Service Providers).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Amendments are proposed for §§63.1, 63.3, 63.4, 63.5, 63.7, 63.9, 63.13, 63.15, 63.17, and 63.19 in order to implement statutory requirements pursuant to HB 917 of the 87th Regular Legislative Session, clarify the intent of the rules and their interaction with other rules and statutes, and enhance public understanding.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

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

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rules reflect clarifications of the intent of the rules and their interaction with other rules and statutes and implement statutory requirements pursuant to HB 917 of the 87th Regular Legislative Session. The proposed amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to clarify public understanding of the agency's administration of the rules.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at Cynthia.Hamilton@ers.texas.gov. The deadline for receiving comments is Monday, November 22, 2021, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§63.1. Duties of the Board of Trustees.

The Board of Trustees shall formulate [the basic and general] policies[; and rules[; and regulations] consistent with the [purposes, policies, principles, and standards stated in] statutes that govern ERS [administered by the board]. [The board has appellate jurisdiction of appeals from adverse determinations made by the executive director as provided in Chapter 67, Hearings on Disputed Claims.]

§63.3. Election of Trustees (Nomination Process).

A member or retiree of the system who meets statutory eligibility criteria may be nominated to serve as a trustee of the system [Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas (system)] in the following manner: [-]

(1) A member or retiree [candidate, or his or her agency,] must file a petition on a form approved by the system [requesting the candidate's name to be placed in nomination]. The petition must be signed by 300 or more persons qualified to vote in the trustee election. Only members of the system and retirees are qualified to vote in the election. The system will accept up to 600 signatures from each candidate.

(2) Each [The] signature [of each person] on a petition must be accompanied by that person's printed or typed name, ZIP Code, and any other information requested by the system to confirm the signer's identity. No person may sign a petition for more than one candidate. To do so will cause the signatures of the person to be disqualified on all petitions.

[(3) Blank petition forms may be reproduced and utilized provided the reproduction is an exact replica of the original document.]

[(3) [(4)] The system must receive signed petitions before the deadline established by the board. A copy of a signed paper petition will not be accepted in lieu of the original signed petition. Electronic petitions must be completed and submitted in accordance with the instructions provided with electronic petition forms.

[(5) Only those names of candidates whose petitions comply with this section will be presented on the ballot.]

(4) [(6)] The board shall establish deadlines and other dates related to trustee elections. Blank petitions shall be made available by the system at least 25 calendar days in advance of the deadline established by the board for filing signed petitions.

(5) A member may not be nominated to serve as a trustee if:

(A) the member is employed by the same employer as another trustee whose term will continue following the election; or

(B) the member is currently employed by the system or has been employed by the system within six years prior to the date of nomination.

(6) A retiree may not be nominated to serve as a trustee if:

(A) the board includes another retiree whose term will continue following the election; or

(B) the retiree was an employee of the system within six years prior to the date of nomination.

§63.4. Election of Trustees (Ballot).

(a) The order of the names on the ballot shall [will] be established [set] by drawing at a time and setting determined by the system. Each candidate or the candidate's representative may attend the drawing. [All nominated candidates or their representatives are entitled to be present at the drawing. The time and location of the drawing will be set by the system.]

(b) Each candidate [All candidates] must submit [within] the [time frame established by the system any] information requested by the system for presentation on the ballot. Such information may include[, but is not limited to]:

(1) name as it is to appear on the ballot;

(2) current [classification/exempt] title and position as a state employee;

(3) name and address of [current] employing state agency; and

(4) any other information the system determines may be helpful to the electorate [persons qualified to vote in the election].

(c) In addition to the information described [required] in subsection (b) of this section, each [the] candidate must [shall] provide[, within the time frame provided by the system, his or her state agency mailing address,] a statement of qualifications, a description of the candidate's [and] position on system-related issues [consisting of] (250 words or less), and any [such] additional information requested by [as] the system [may request]. This information shall [, in addition to that which will appear on an election ballot, will] be made available to the electorate through a special election [system] newsletter devoted to the [trustee] election process. This special edition of the newsletter [will] be made available to the electorate at the beginning of each election and [will] describe restrictions on the use of state funds to influence the outcome of any election.

(d) The system may contract with an election administrator to implement and monitor the election process. Balloting may be conducted electronically or in combination with a printed ballot.

(e) The system or the [/] election administrator shall [will], at least 25 days in advance of the close of each election established by the election calendar, make ballots available to eligible voters. Upon the request of a [the] candidate, the system or the [/] election administrator shall [will] provide the candidate with 500 ballots without preprinted names [to each candidate].

(f) The system[/] or the election administrator shall [will] provide a 24-hour toll-free telephone number that [line which] eligible voters may use to request a printed ballot.

(g) Electronic ballots must be completed and submitted to the system or the [/] election administrator in accordance with the instructions provided with each ballot [contained in the electronic voting format].

[(h) Each candidate may designate one (1) person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.]

(h) [(i)] The system or the [/] election administrator shall [will] disqualify any ballot that does [ballots which do] not meet the requirements [and instructions] specified in the instructions provided with [the electronic format or printed on] the ballot.

(i) [(j)] The board or the board's designee shall certify election results. If only one candidate is eligible to be presented on the ballot, the board or the board's designee may certify the candidate without an election.

§63.5. Rulemaking Procedure.

(a) Initiation method. The [proceedings for the] promulgation, adoption, repeal, or revision of any rule [rules] may be initiated by the executive director or any member of the board [Board of Trustees].

(b) Petitions. Any interested person may petition [to] the executive director or the board to request [Board of Trustees requesting] the adoption of a rule. Within 60 days after [of] the receipt of a [the] petition, the executive director shall [will] either initiate rulemaking proceedings or place the matter on the agenda of the next regularly scheduled board meeting for discussion.

§63.7. Public Comment to the Board of Trustees.

A member [Members] of the public who wishes [wish] to make a presentation to the board [Board of Trustees] regarding an item [items] on the board's agenda may do so in accordance with the following [rules and] procedures: [.]

(1) A form approved by the system must be completed and submitted to the system prior to the board meeting in the time and manner specified. [Immediately preceding the board meeting, a form furnished by the board shall be completed, indicating the agenda item or items to be addressed.]

(2) Only the parties involved in an appeal may comment on administrative appeals that are presented to the board. [Comments regarding agenda items relating to administrative appeals to the board are limited only to parties involved in those appeals or their legal representatives.]

(3) The [Comments from the public regarding agenda items will be heard by the] board shall hear comments regarding an agenda item at the time the agenda item is under consideration [and before a final decision is made].

(4) Comments by an individual on a particular agenda item shall be limited to five minutes[.] unless the chair modifies the amount of time allotted [modified at the discretion of the chairman of the Board of Trustees].

(5) The combined maximum amount of time for all public comments regarding [for] an agenda item is 30 minutes[.] unless the chair modifies the amount of time allotted [modified at the discretion of the chairman of the Board of Trustees].

(6) Members of the public are encouraged to submit written comments to the board in lieu [place] of [.] or in addition to [.] oral comments [presentations].

§63.9. Officers.

At the last regularly scheduled board meeting each year, the board shall elect a chair and vice chair who shall take office the following September 1. The chair or vice chair, in the chair's absence, shall preside at meetings of the board. [The members of the Board of Trustees shall elect a chairman and vice chairman for each fiscal year. The officers shall be elected at the last scheduled regular board meeting of a fiscal year and shall take office the following September 1. The chairman of the board or the vice chairman, in the chairman's absence, will preside

at the meetings of the board. While presiding, the chairman will direct the order of the meeting; recognize persons to be heard; limit time; take other action to clarify issues; and preserve order.]

§63.13. Committees.

The internal audit committee shall be considered a standing committee, and members shall be appointed by the chair [chairman] at the beginning of each [fiscal] year. The chair [chairman] shall designate additional ad hoc committees as [are] necessary [to consider various aspects of the board's work]. The term of an ad hoc committee shall be for the [fiscal] year in which the ad hoc committee is appointed or until the work of the ad hoc committee is completed if within the [fiscal] year.

§63.15. Robert's [Roberts] Rules of Order.

Unless otherwise required [otherwise] by law or these rules, Robert's [Roberts] Rules of Order may [shall] be used in the conduct of business by the board to the extent practicable.

§63.17. Advisory Committees.

(a) The composition and functions of the Medical Board [(Government Code, §815.204) is created pursuant to law. This committee will be composed of the number of people directed by law and will have the purposes, tasks, and reporting requirements] are established by statute [law]. Remuneration, if any, for Medical Board [committee] members shall [will] be determined by the board. The Medical Board shall [committee will] perform its tasks until abolished by the legislature.

(b) The Investment Advisory Committee (IAC) shall [is created to consult with and] advise the board on issues related to investments [and investment related issues]. Subject to applicable statutory requirements, the board shall determine the [The] number of IAC members [on the IAC], the prerequisites for membership, the reporting requirements for the IAC, whether to abolish the IAC, and the remuneration, if any, for IAC members [and its reporting requirements will be determined by the board. The IAC will perform its tasks until abolished by the board].

(c) The Group Benefits Advisory Committee (GBAC) shall [is created to] advise the board on employee benefits administered by the board as part of [within] the Texas Employees Group Benefits Program. The board shall determine the number of GBAC members [on the GBAC], the prerequisites for membership, the reporting requirements for the GBAC, whether to abolish the GBAC, and the remuneration, if any, for GBAC members [and its reporting requirements will be determined by the board. The GBAC will perform its tasks until abolished by the board].

§63.19. Standards [Standard] of Conduct for Financial Advisors and Service Providers.

In accordance with Tex. Gov't Code §2263.004, any financial advisor or [advisors and] service provider [providers ("Financial Advisors")] who receives [receives], directly or indirectly, more than \$10,000.00 in compensation from the system [System] during a [fiscal] year[;] and provides [who provide] financial services to the system, the board, or a member of the board [System, the System's Board of Trustees, or the individual members of the Board of Trustees] regarding the management or investment of the system's [System's] funds[;] shall comply with all applicable standards of conduct established by [with which they are required to comply in accordance with] federal and [or] state laws and regulations, relevant trade and professional associations, and the system's [System's] Investment Policy. The system may terminate any business relationship, including the termination of a contract, for failure to comply with an applicable standard of conduct as required by this section. [Financial Advisors must agree to comply with these standards of conduct as a prerequisite to establishing and continuing

any business relationship with the System. Failure to comply with applicable standards of conduct authorizes the System to terminate any business or contractual relationship at the System's discretion.]

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 C. Hamilton

Acting General Counsel

Employees Retirement System of Texas

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For further information, please call: (877) 275-4377



CHAPTER 65. EXECUTIVE DIRECTOR

34 TAC §§65.1, 65.5, 65.7, 65.9, 65.11, 65.13

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 65, concerning the Executive Director, by amending §65.1 (Duties of the Executive Director), §65.5 (Correction of Administrative Error), §65.7 (Appointment of Examiner), §65.9 (Delegation of Authority), §65.11 (Reimbursement for Training or Education), and §65.13 (Enhanced Contract Monitoring).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Tex. Admin. Code, §§61.1 *et seq.*

Amendments are proposed for §§65.1, 65.5, 65.7, 65.9, 65.11, and 65.13 in order to clarify the intent of the rules and their interaction with other rules and statutes and enhance public understanding.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

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

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments to the rules reflect clarifications of the intent of the rules and their interaction with other rules and statutes as well as an enhanced public understanding of the rules. The proposed amendments do not constitute a taking. Mr. Yawn has also determined that, to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments do not impose a cost on regulated persons.

Mr. Yawn also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to clarify public understanding of the agency's administration of the rules.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at Cynthia.Hamilton@ers.texas.gov. The deadline for receiving comments is Monday, November 22, 2021 at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments.

§65.1. Duties of the Executive Director.

All the administrative and decisional powers granted by the statutes that govern ERS [administered by the board] are vested in the executive director, subject to [the basic and general] policies[,] and rules formulated by the board [and regulations, and appellate jurisdiction of the board].

§65.5. Correction of Administrative Error.

The executive director may take [such] action [that is] necessary to correct an administrative error [and the effects thereof]. The reason for any [An] action by the executive director to correct an administrative error [made pursuant to this section and the reasons for such action] shall be made [a] part of the appropriate record.

§65.7. Appointment of Examiner.

The executive director shall have authority to appoint an examiner to conduct proceedings related to contested cases under [provided by] the Administrative Procedure Act [(Tex. Gov't Code Ann. §§2001.001 et seq.)].

§65.9. Delegation of Authority.

Any right, power, or duty [imposed or] conferred on the executive director by statute, [law or by] rule, or board action may be exercised or performed by the deputy executive director as provided by Tex. Gov't Code §815.202(f) or if the executive director is incapacitated or otherwise unable to act.

§65.11. Reimbursement for Training or Education.

Before an employee of the system may be reimbursed under Tex. Gov't Code §656.047(b)[, Texas Government Code,] the executive director must authorize the tuition reimbursement payment based on compliance with the requirements of §656.047(b)[,] and [as consistent with] applicable laws governing the trusts administered by the system [ERS].

§65.13. Enhanced Contract Monitoring.

(a) Contracts described by Tex. Gov't Code §2261.251(b)[, Texas Government Code,] are subject to the system's enhanced contract and performance monitoring procedures.

(b) The executive director shall designate [a] staff [member(s)] who will be responsible for submitting the information on contracts described by Tex. Gov't Code §2261.251(b)[, Texas Government Code,] to the board [of trustees].

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 C. Hamilton

Acting General Counsel

Employees Retirement System of Texas

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CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.4, 85.6, 85.7

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 85, concerning Flexible Benefits, by amending §85.1. (Introduction and Definitions), §85.4 (Separate Plans), and §85.7. (Enrollment) and adding §85.6. (Relief Options due to the Coronavirus (COVID-19)).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Texas Administrative Code, §§61.1 *et seq.*

Amendments are proposed for §§85.1, 85.4, and 85.7 in order to clarify their interaction with §85.6.

Section 85.6, concerning Relief Options Due to the Coronavirus (COVID-19), is proposed to be added in order to implement the requirements of §214 of the Federal Taxpayer Certainty and Disaster Tax Relief Act of 2020 and other relevant federal law.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rules will be in effect:

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

(6) the proposed amendments and rules will expand an existing rule or regulation, and will also repeal an existing rule or regulation;

(7) the proposed amendments and rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed amendments and rules will not positively or adversely affect the state's economy.

Ms. Diana Kongevick, Director of Group Benefits, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rules; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments and rules reflect the implementation of the requirements of §214 of the Federal Taxpayer Certainty and Disaster Tax Relief Act of 2020 and other relevant federal law. The proposed amendments do not constitute a taking. Ms. Kongevick has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed, and the proposed amendments do not impose a cost on regulated persons.

Ms. Kongevick also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of adopting and complying with the rules would be to create COVID-19 relief options for dependent care accounts and health care reimbursement accounts, which include limited purpose health care reimbursement accounts, for plan years 2020 and 2021. The changes and allowances are provided for in the Federal Consolidated Appropriations Act of 2021, which was signed into law on December 27, 2020. Additionally, the proposed changes would eliminate the qualified transportation benefit.

Comments on the proposed amendments and rules may be submitted to Cynthia C. Hamilton, Acting General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at Cynthia.Hamilton@ers.texas.gov. The deadline for receiving comments is Monday, November 22, 2021, at 10:00 a.m.

The amendments and rules are proposed under Tex. Gov't Code §815.102, which provides authorization for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the Board.

No other statutes are affected by the proposed amendments and rules.

§85.1. Introduction and Definitions.

(a) **Summary.** The purpose of these rules is to govern the flexible benefits program. These rules constitute the Plan document for the State of Texas Employees Flexible Benefit Program (TexFlex). The flexible benefits plan (the plan) includes reimbursement account arrangements with optional benefits available for selection by participants as described in the plan and these rules. The plan is intended to be qualified under the Internal Revenue Code (the Code), §125, as amended from time to time, and is intended to continue as long as it qualifies under §125 and is advantageous to the state and institutions of higher education employees. Optional benefits offered under the plan for individual selection consist only of a choice between cash and certain statutory nontaxable fringe benefits as defined in the Code, §125, and regulations promulgated under the Code, §125. The plan may also

include separate benefits as defined in the Code, §132, and regulations promulgated under the Code, §132, separate from the cafeteria plan, and governed by individual plan documents.

(b) **Applicability of rules.**

(1) These rules are applicable only to employees as defined in these rules, and terminated employees, as described in §85.3(b)(1)(B) and (C) of this title (relating to Eligibility and Participation).

(2) An employee who retired or separated from employment prior to September 1, 1988, shall not be entitled to benefits under the provisions of the plan and these rules, unless the employee is rehired and then becomes eligible for benefits.

(c) **Definitions.** The following words and terms when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1) **Act**--The state law that authorized the establishment of a flexible benefits plan and is designated in the Texas Insurance Code, Chapter 1551, as amended.

(2) **Account**--A record keeping account established by the Employees Retirement System of Texas or its designee in the name of each participant for the purpose of accounting for contributions made to the account and benefits paid to a participant.

(3) **Active duty**--The expenditure of time and energy in the service of an employer as defined in these rules. An employee will be considered to be on active duty on each day of a regular paid vacation or on a non-work day, on which the employee is not disabled, if the employee was on active duty on the last preceding work day.

(4) **Board of trustees**--The board of trustees of the Employees Retirement System of Texas (ERS).

(5) **Code**--The Internal Revenue Code, as amended from time to time.

(6) **Compensation**--A participant's base salary, including amounts that would otherwise qualify as compensation but are not received directly by the participant pursuant to a good faith, voluntary, written or electronic salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under this plan, plus longevity and hazardous duty pay and including non-monetary compensation, the value of which is determined by the Employees Retirement System of Texas, but excluding overtime pay.

(7) **Debit Card**--A bank issued convenience card or similar technology approved by the plan administrator and permitted to be used by participants as an optional method to pay for eligible transactions. Use of the card is governed by the plan administrator and issuing financial institution. The card is referred to as the Flex Debit Card.

(8) **Dependent**--An individual who qualifies as a dependent under the Code, §152, and when applicable taking into account the Code, §105, or any individual who is:

(A) except as provided by §85.6(b)(3) of this title, a dependent of the participant who is under the age of 13 and with respect to whom the participant is entitled to an exemption under the Code, §151, or, is otherwise, a qualifying individual as provided in the Code, §21; or

(B) a dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

(9) Dependent care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(10) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits).

(11) Dependent care expenses--Expenses incurred by a participant which:

(A) are incurred for the care of a dependent of the participant;

(B) are paid or payable to a dependent care service provider or to the participant as reimbursement for such expenses; and

(C) are incurred to enable the participant to be gainfully employed for any period for which there are one or more dependents with respect to the participant. Dependent care expenses shall not include expenses incurred for the services outside the participant's household for the care of a dependent, unless such dependent is a dependent under the age of 13 (or through age 14 as provided by §85.6(b)(3) of this title) with respect to when the participant is entitled to a tax deduction under the Code, §151, or a dependent who is physically or mentally incapable of self support. In the event that the expenses are incurred outside the dependent's household, the dependent must spend at least eight hours each day in the participant's household. Dependent care expenses shall be deemed to be incurred at the time the services to which the expenses relate are rendered.

(12) Dependent care service provider--A person or a dependent care center (as defined in the Code, §21) who provides care or other services described in the definition of "dependent care expenses" in this section, but shall not include:

(A) a related individual described in the Code, §129; or

(B) a dependent care center which does not meet the requirements of the Code, §21.

(13) Effective date of the plan--September 1, 1988.

(14) Election form--A paper or electronic form provided by the Employees Retirement System of Texas that is an agreement by and between the employer and the participant, entered into prior to an applicable period of coverage, in which the participant agrees to a reduction in compensation for purposes of purchasing benefits under the plan.

(15) Eligible employee--An employee who has satisfied the conditions for eligibility to participate in the plan in accordance with the plan and §85.3(a)(1), and (b)(1) of this title (relating to Eligibility and Participation), and, to the extent necessary, a retired or terminated employee who is entitled to benefit payments under the plan.

(16) Employee--A person who is eligible to participate in the Texas Employees Group Benefits Program as an employee.

(17) Employer--The State of Texas, its agencies, commissions, institutions of higher education, and departments, or other governmental entity whose employees are authorized to participate in the Texas Employees Group Benefits Program.

(18) Expenses incurred--Expenses for services received or performed and for which the participant is legally responsible.

(19) Executive director--The executive director of the Employees Retirement System of Texas.

(20) Flexible benefit dollars--The dollars available to a participant which may be used for purposes of purchasing benefits under the plan.

(21) General purpose health care reimbursement account--The account described in §85.5(b)(1).

(22) Grace period--A two (2) month and 15 day period, adopted by the TexFlex plan pursuant to IRS Notice 2005-42, immediately following the end of the plan year during which participants may continue to incur expenses for reimbursement from the prior year account balance. The grace period does not apply to a health care reimbursement plan year that begins on or after September 1, 2014, but does apply to the dependent care reimbursement plan, except as limited by §85.6(b)(2) of this title.

(23) Health care expenses--Any expenses incurred by a participant, or by a spouse or dependent of such participant, for health care as described in or authorized in accordance with the Code, §105 and §213, but only to the extent that the participant or other person incurring the expense is not reimbursed for the expense by insurance or other means. The types of expenses include, but are not limited to, amounts paid for hospital bills, doctor bills, prescription drugs, hearing exams, vision exams, and eye exams.

(24) Health care reimbursement account--The bookkeeping account maintained by the plan administrator or its designee used for crediting contributions to the account and accounting for benefit payments from the account.

(25) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits).

(26) Institution of higher education--All public community/junior colleges, senior colleges or universities, or any other agency of higher education within the meaning and jurisdiction of the Education Code, Chapter 61, except the University of Texas System and the Texas A&M University System.

(27) Leave of absence without pay--The status of an employee who is certified monthly by an agency or institution of higher education administrator to be absent from duty for an entire calendar month, and who does not receive any compensation for that month.

(28) Limited purpose health care reimbursement account--The account described in §85.5(b)(3).

(29) Option--Any specific benefit offering under the plan.

(30) Participant--An eligible employee who has elected to participate in the plan for a period of coverage.

(31) Period of coverage--The plan year during which coverage of benefits under the plan is available to and elected by a participant; however, an employee who becomes eligible to participate during the plan year may elect to participate for a period lasting until the end of the current plan year. In such case, the interval commencing on such employee's entry date and ending as of the last day of the current period of coverage shall be deemed to be such participant's period of coverage.

(32) Plan--The flexible benefits plan established and adopted by the board of trustees pursuant to the laws of the state of Texas and any amendments which may be made to the plan from time to time. The plan is referred to herein as TexFlex, and is comprised of a dependent care reimbursement plan, a health care reimbursement plan, an insurance premium conversion plan, and a qualified transportation benefit plan.

(33) Plan administrator--The board of trustees of the Employees Retirement System of Texas or its designee.

(34) Plan year--A 12-month period beginning September 1 and ending August 31.

(35) Run-out period--The period following the end of the plan year between September 1 and December 31, during which participants may file claims for reimbursement of expenses incurred during the plan year.

(36) Statutory nontaxable benefit--A benefit provided to a participant under the plan, which is not includable in the participant's taxable income by reason of a specific provision in the Code and is permissible under the plan in accordance with the Code, §125.

(37) Spouse--The person to whom the participant is married. Spouse does not include a person separated from the participant under a decree of divorce, or annulment.

(38) TexFlex--The flexible benefits plan adopted by the board of trustees.

(39) Texas Employees Group Benefits Program (GBP)--The employee insurance benefits program administered by the Employees Retirement System of Texas, pursuant to Texas Insurance Code, Chapter 1551. The program consists of health, voluntary accidental death and dismemberment, optional term life, dependent term life, short and long term disability, vision, and dental insurance coverages.

(40) Third Party Administrator or TPA--The vendor, administrator or firm selected by the plan administrator to perform the day-to-day administrative responsibilities of the TexFlex program for participants of the Texas Employees Group Benefits Program who enroll in either the health care reimbursement plan, dependent care reimbursement plan or both.

§85.4. *Separate Plans.*

(a) Dependent care reimbursement plan--A separate plan under the Code, §129, adopted by the board of trustees, and designed to provide payment or reimbursement for dependent care expenses as described in §85.5(c) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(a), 85.5(a), 85.5(c), 85.7, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(b) Health care reimbursement plan--A separate plan, under the Code, §105, adopted by the board of trustees, and designed to provide health care expense reimbursement as described in §85.5(b) of this title (relating to Benefits). The following sections of this chapter constitute the plan: §§85.1, 85.3(b), 85.5(a), 85.5(b), 85.7, 85.8, 85.9, 85.11, 85.12, 85.13, 85.15, 85.17, and 85.19.

(c) Insurance Premium Conversion Plan--A separate plan under §105(b) of the Code designed to provide insurance premium conversion as described in §81.7. The Insurance Premium Conversion Plan is intended to comply with the Internal Revenue Code, §79 and §106.

(d) Qualified transportation benefit plan--A separate plan under the Code, §132, approved by the board of trustees, and designed to provide payment or reimbursement for certain transportation expenses. The qualified transportation benefit plan is governed by a plan document as executed and approved by the Executive Director, and as amended hereafter. A copy of the plan document may be obtained from the Employees Retirement System of Texas on request.]

§85.6. *Relief Options due to the Coronavirus (COVID-19)*

The following provisions, which apply only to plan years 2021 and 2022, are enacted pursuant to §214 of the Federal Taxpayer Certainty and Disaster Tax Relief Act of 2020 and other relevant federal law.

(1) Dependent care reimbursement plan.

(A) Unlimited carryover. A participant may carry over to plan year 2021 any unused amount in a dependent care reimbursement account that would have expired at the end of plan year 2020 and may carry over to plan year 2022 any unused amount in a dependent care reimbursement account that would have expired at the end of plan year 2021.

(B) Grace periods. Because of unlimited carryover relief, grace periods for dependent care reimbursement accounts do not apply for plan years 2020 and 2021.

(C) Dependent age extension. For plan years 2020 and 2021, the maximum age of a dependent is 14.

(D) Prospective mid-year election changes. During calendar year 2020 and through plan year 2021, a participant may increase or decrease contribution amounts or end enrollment for a dependent care reimbursement account without a qualifying life event. A participant may not reduce contributions to an amount less than the total of:

(i) the amount of payroll distributions in the account, if any; and

(ii) the amount of reimbursement the participant has received, if any.

(2) Health care reimbursement plan.

(A) Unlimited carryover. A participant may carry over to plan year 2021 any unused amount in a health care reimbursement or limited purpose health care reimbursement account that would have expired at the end of plan year 2020 and may carry over to plan year 2022 any unused amount in a health care reimbursement or limited purpose health care reimbursement account that would have expired at the end of plan year 2021.

(B) Post-termination reimbursement. A participant who ceases contributing to a health care reimbursement or limited purpose health care reimbursement account during plan year 2020 or 2021 may continue to receive reimbursement from any unused amount through the end of the plan year in which participation ended, including any grace period or extended grace period.

(C) Prospective mid-year election changes. During calendar year 2020 and through plan year 2021, a participant may increase or decrease contributions or end enrollment for a health care reimbursement account or a limited purpose health care reimbursement account without a qualifying life event. A participant may not reduce contributions to an amount less than the total of:

(i) the amount of payroll distributions in the account, if any; and

(ii) the amount of reimbursement the participant has received, if any.

§85.7. *Enrollment.*

(a) Election of benefits.

(1) An eligible employee may elect to participate in the health care and/or dependent care reimbursement accounts within the flexible benefits plan by making an election and executing an election form or enrolling electronically.

(2) An employee who becomes eligible after the beginning of a plan year has 30 days from the date of eligibility to elect or decline benefits by executing an election form.

(3) By enrolling in the plan, the employee agrees to a reduction in compensation or agrees to after-tax payments equal to the participant's share of the cost and any fees for each reimbursement account selected.

(4) An election to participate in a reimbursement plan must be for a specified dollar amount plus any administrative fee.

(5) An annual enrollment period will be designated by the Employees Retirement System of Texas and shall be prior to the beginning of a new plan year. The annual enrollment period shall provide an opportunity to change and to elect or decline benefit options.

(6) An active employee who is enrolled in reimbursement accounts immediately prior to the annual enrollment period will be automatically re-enrolled with the same elections and contribution amounts for the new plan year unless the active employee takes action during the annual enrollment period to change contribution amounts or to decline participation.

(b) Effects of failure to elect.

(1) If the Employees Retirement System of Texas does not receive an election form from an eligible employee to participate in the reimbursement accounts by the due date, it shall be deemed an express election and informed consent by the eligible employee to:

(A) receive cash compensation as a benefit by reason of failure to purchase optional benefits in lieu of cash compensation; or

(B) in the case of automatic re-enrollment during the annual enrollment period, to continue participation in the reimbursement accounts with the same contributions for the new plan year.

(2) To the extent an eligible employee does not elect the maximum permissible participation amounts hereunder, he shall be deemed to have elected cash compensation.

(c) Benefit election irrevocable except for qualifying life event.

(1) An election to participate shall be irrevocable for the plan year unless a qualifying life event occurs, and the change in election is consistent with the qualifying life event. The plan administrator may require documentation in support of the qualifying life event.

(2) A qualifying life event occurs when an employee experiences one of the following changes:

(A) change in marital status;

(B) change in dependent status;

(C) change in employment status;

(D) change of address that results in loss of benefits eligibility;

(E) change in Medicare or Medicaid status, or Children's Health Insurance Program (CHIP) status;

(F) significant cost of benefit or coverage change imposed by a third party provider other than a provider through the Texas Employees Group Benefits Program; or

(G) change in coverage ordered by a court.

(3) An election form requesting a change in election must be submitted on, or within 30 days after, the date of the qualifying life event, provided, however, a change in election due to CHIP status under paragraph (2) of this subsection must be submitted on, or within 60 days after, the change in CHIP status.

(4) A change in election as provided in this subsection becomes effective on the first day of the month following the date of the qualifying life event.

(d) Payment of flexible benefit dollars.

(1) Flexible benefit dollars from an active duty employee shall be recovered through payroll withholding at least monthly during the plan year and remitted to the Employees Retirement System of Texas for the purpose of purchasing benefits. For the health care reimbursement account only, and except as otherwise provided in §85.3(b)(3)(D) of this title (relating to Eligibility and Participation), flexible benefit dollars from employees on leave without pay status or who have insufficient funds for any month shall be recovered through direct after-tax payment from the employee or upon the return of the employee to active duty status from payroll withholding, for the total amount due.

(2) An employee's flexible benefit dollars with respect to any month during the plan year shall be equal to the authorization on the employee's election form plus any administrative fees.

(3) Flexible benefit dollars received by the Employees Retirement System of Texas shall be credited to the participant's dependent care reimbursement account and/or health care reimbursement account, as appropriate.

(e) Forfeiture of account balances.

(1) The amount credited to a participant's reimbursement account for each benefit election for any plan year will be used to reimburse or pay qualified expenses incurred during the eligible employee's period of coverage in such plan year, if the claim is electronically adjudicated or if the participant files a correctly completed claim for reimbursement on or before December 31 following the close of the plan year.

(2) Except as provided by §85.6 of this title and by subsection (g) of this section, any balances remaining after payment of all timely and correctly filed claims postmarked no later than December 31 following the close of the plan year, shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(3) Except as provided by §85.6 of this title, an [An] unexpended balance in an amount of \$25 or less is not eligible for carryover under subsection (g) of this section if the participant does not reenroll in the plan for the subsequent plan year. The unexpended balance shall be forfeited by the participant and be available to pay administrative expenses of the flexible benefits program.

(f) Reimbursement report to participant. The plan administrator or its designee may provide to the participant periodic reports on each reimbursement account, showing the account transactions (disbursements and balances) during the plan year. These reports may be provided periodically through electronic means.

(g) Carryover of unexpended balances. Under IRS regulations, a participant may be permitted to carry over a specific amount of unspent flexible benefit plan dollars to the immediately following plan year. The flexible benefit dollars carried over may be used to pay or reimburse incurred expenses under the health care reimbursement plan during the entire plan year to which the dollars are carried over. A participant is entitled to carry over a designated amount set by the Employees Retirement System of Texas and publicly posted. Except as provided by §85.6 of this title, the carryover [; such designated] amount shall not exceed the maximum of the indexed amount of the carryover limit set by the Internal Revenue Service, and any balance in excess of this designated amount is forfeited as provided by subsection (e) of this section. Any amount of carryover that rolls over into the new plan year does not affect the maximum amount of participant.

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 C. Hamilton

Acting General Counsel

Employees Retirement System of Texas

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