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 8. ADVISORY OPINIONS

1 TAC §8.7

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §8.7, regarding the contents of a request for an advisory opinion.

Any person who is subject to a law within the commission's jurisdiction can submit a written advisory opinion request to the commission that asks how that law applies to their circumstances. In order to obtain an opinion, the requestor must first show that they have standing to request the opinion. The proposed amendment would require any advisory opinion request to disclose the requestor's identity so that the commission can confirm that the requestor has standing to request the opinion. State law requires the name of a requestor to be confidential (unless waived), and the amendment would not affect that requirement.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the law as to disclosure of the requestor of an advisory opinion, thereby allowing the commission to verify that the requestor has standing to request the opinion. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. 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 amendment to §8.7 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §8.7 affects Subchapter D, Chapter 571, of the Texas Government Code.

§8.7. Request for an Advisory Opinion.

(a) A request for an advisory opinion shall describe a specified factual situation. The facts specified may be real or hypothetical. The request must provide sufficient detail to permit the commission to provide a response to the request, including the name of the person making the request and, if applicable, the name of the person on whose behalf the request is made.

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, hand-delivered, or faxed to the commission at the agency office.

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 April 14, 2016.

TRD-201601746
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §20.1, by adding a definition for the term "school district."

In the 2015 session, the Texas Legislature passed House Bill 1114 requiring a specific-purpose committee (SPAC) "created to support or oppose a measure on the issuance of bonds by a school district" to file campaign finance reports with the commission instead of the district. Those SPACs must now file a campaign treasurer appointment with the respective district and all campaign finance reports with the commission. Title 15 of the Election Code does not define the term "school district." Section 130.122, Education Code, and article VII, section 3, of the Texas Constitution indicate that a court would likely consider a junior college district (or community college district) to be a "school district" for purposes of the requirement that an SPAC supporting or opposing a bond issued by a "school district" file its reports with the commission.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules regarding whether a junior college district or community college district is a school district for purposes of the filing requirements for an SPAC created to support or oppose a measure on the issuance of bonds by a school district. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. In addition to this proposed amendment, new Texas Ethics Commission Rule §20.66 relating to this subject matter has been proposed. The commission invites comments on both proposals. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item relating to the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at www.ethics.state.tx.us.

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Title 15 of the Texas Election Code.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (22) (No change.)

(23) School district--For purposes of §254.130 of the Election Code and §§20.3 (relating to Reports Filed with the Commission), 20.7 (relating to Reports Filed with Other Local Filing Authority), and 20.315 (relating to Termination of Campaign Treasurer Appointment) of this title, the term includes a junior college district or community college district.

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

Filed with the Office of the Secretary of State on April 14, 2016.

TRD-201601747
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

♦ ♦ ♦

CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.5

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §34.5, regarding whether compensation received for certain activities does not require a person to register as a lobbyist.

Section 305.003 of the Texas Government Code requires, in part, a person to register when the person exceeds $1,000 in a calendar quarter to lobby a member of the legislative or executive branch to influence legislation or administrative action. A person is also required to register when the person's compensation exceeds $1,000 in a calendar quarter and the person makes such communications as part of their regular employment. When calculating the amount of compensation a person receives, commission rule §34.5 excludes compensation received for certain types of activities listed in the rule.

The proposed amendment would clarify that rule §34.5 means that a person does not have to register if their only lobby activity is receiving compensation for certain listed activities. If a person has other activities that are not exempt, and the person exceeds the compensation or expenditure threshold, then registration and reporting of all compensation for lobbying is required, unless that activity is exempt from disclosure by other law. Additionally, if a person chooses to register when registration is not required, then the person must report their lobby compensation, even if it is for activities listed in rule §34.5.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in the law as to whether compensation received for certain activities would require a person to register as a lobbyist. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. 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 amendment to §34.5 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §34.5 affects Chapter 305 of the Texas Government Code.

§34.5. Certain Compensation Excluded.

(a) Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code §305.003(a)(2)[~~, and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305,~~] and this chapter:

(1) requesting a written opinion that interprets a law, regulation, rule, policy, practice, or procedure administered by a state office or agency;

(2) preparation or submission of an application or other written document that merely provides information required by law, statute, rule, regulation, order, or subpoena, or that responds to a document prepared by a state agency;

(3) communicating merely for the purpose of demonstrating compliance with an audit, inspection, examination of a financial institution, or government investigation to interpret and determine compliance with existing laws, rules, policies, and procedures;

(4) communicating for the purpose of achieving compliance with existing laws, rules, policies, and procedures, including communications to show qualification for an exception of general applicability that is available under existing laws, rules, policies, and procedures;

(5) providing to a member of the legislative or executive branch information consisting of facts or data that the member requested in writing regarding legislation or administrative action, when the request was not solicited by or on behalf of the person providing the information;

(6) communicating to an agency's legal counsel, an administrative law judge, or a hearings examiner concerning litigation or adjudicative proceedings to which the agency is a party, or concerning adjudicative proceedings of that agency;

(7) providing testimony, making an appearance, or any other type of communication documented as part of a public record in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure Act, Government Code, Chapter 2001, whether or not that proceeding is subject to the Open Meetings Law;

(8) providing oral or written comments, making an appearance, or any other type of communication, if documented as part of a public record in an agency's rule-making proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, or in public records kept in connection with a legislative hearing; or

(9) providing only clerical assistance to another in connection with the other person's lobbying (for example, a person who merely types or delivers another person's letter to a member).

(b) Subsection (a) of this section does not apply to a registrant. A registrant's activity described by subsection (a) is subject to disclosure under Chapter 305 of the Government Code and this title.

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 April 14, 2016.

TRD-201601748
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

♦ ♦ ♦

1 TAC §34.14

The Texas Ethics Commission (the commission) proposes new Texas Ethics Commission Rule §34.14, regarding Expenditures for Fact-Finding Trips.

Section 34.14 relates to when an expenditure for transportation or lodging provided by a lobbyist to a member of the legislative or executive branch would be for a fact-finding trip. Section 305.024 of the Government Code restricts travel expenditures by lobbyists for members of the legislative and executive branches. However, §305.025(4), Texas Government Code, permits a lobbyist to provide, in part, "necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips." The proposed rule §34.14 provides clarity on what constitutes a fact-finding trip and how to disclose the purpose of an expenditure for a fact-finding trip on a lobby activities report when detailed itemization is required.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed 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.

Ms. Ashley has also determined that for each year of the first five years the proposed new rule is in effect the public benefit will be clarification in the commission's rules regarding when a lobbyist may provide transportation or lodging to a member of the legislative or executive branch for a fact-finding trip, and how the purpose of such an expenditure must be reported on a lobby activities report. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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 Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. 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 proposed new rule, §34.14, is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new rule, §34.14, affects Chapter 305 of the Texas Government Code.

§34.14. Expenditures for Fact-Finding Trips.

(a) For purposes of §305.025(3), Government Code, an expenditure for transportation or lodging provided to a member of the legislative or executive branch is for a fact-finding trip only if:

(1) the expenditure is necessary for the member to obtain information that directly relates to the member's official duties;

(2) the member cannot obtain the information without the expenditure; and

(3) the expenditure is not for the member's attendance at a merely ceremonial event or pleasure trip.

(b) If an expenditure made for transportation or lodging for a fact-finding trip is required to be disclosed on a lobby activities report by §305.0061(a), Government Code, the purpose of the transportation or lodging must include a description of the information that the expenditure was necessary to obtain under subsection (a) of this section.

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

Filed with the Office of the Secretary of State on April 14, 2016.

TRD-201601749
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

CHAPTER 46. DISCLOSURE OF INTERESTED PARTIES

1 TAC §46.3

The Texas Ethics Commission (the commission) proposes amendments to Texas Ethics Commission Rule §46.3, regarding definitions related to §2252.908, Texas Government Code.

House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code, to require a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Section 46.3 defines relevant terms used in §2252.908. Since the adoption of section 46.3, the commission has received numerous inquiries regarding the definitions of several terms related to §2252.908 and the proposed amendments are intended to address some of those concerns. The proposed amendments change the definitions of "contract," "controlling interest," and "intermediary" and add definitions for the terms "signed" and "value."

Section 46.1 of the commission's rules provides that the disclosure requirement applies to contracts that meet either of the following conditions: (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed; or (2) the value of the contract is at least $1 million. The proposed amendment provides that the value of a contract is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract.

The definition of "contract" would be amended to mean a contract between a governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, whichever is earlier. The term includes an amended, extended, or renewed contract, which is unchanged by the proposed amendments.

The definition of "controlling interest" would be amended to provide that service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers, would not constitute a controlling interest if the officer is an officer of a publicly held business entity or its wholly owned subsidiary.

The definition of "intermediary" would be amended to exclude an employee of an entity with a controlling interest in the business entity.

The definition of "signed" would be added, providing that the term includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendments are in effect the public benefit will be clarification in the law as to the disclosure of interested parties in contracts with government entities or state agencies. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendments from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendments may do so at any commission meeting during the agenda item relating to the proposed amendments. 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 to §46.3 are proposed under Texas Government Code §2252.908(g), which requires and authorizes the commission to adopt rules necessary to implement Texas Government Code §2252.908.

The proposed amendments to §46.3 affect §2252.908 of the Texas Government Code.

§46.3. Definitions.

(a) "Contract" means a contract between a governmental entity or state agency and a business entity at the time it is voted on by the governing body or at the time it binds the governmental entity or state agency, whichever is earlier, and includes an amended, extended, or renewed contract.

(b) "Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

(c) "Controlling interest" means:

(1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;

(2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or

(3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. This paragraph does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.

(d) "Interested party" means:

(1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or

(2) an intermediary.

(e) "Intermediary," for purposes of this rule, means, a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

(1) receives compensation from the business entity for the person's participation;

(2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and

(3) is not an employee of the business entity or of an entity with a controlling interest in the business entity.

(f) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing, including an electronic signature.

(g) "Value" of a contract is based on the amount of consideration received or to be received by the business entity from the governmental entity or state agency under the contract.

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 April 14, 2016.

TRD-201601750
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

1 TAC §46.5

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule §46.5, relating to §2252.908 of the Texas Government Code, to clarify that a description of a contract includes property other than services or goods and to amend the timing of a notification to the commission of a receipt of a completed disclosure form and certification of filing.

House Bill 1295, adopted by the 84th Legislature, created §2252.908, Texas Government Code, to require a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Section 46.5 is amended to provide guidance on the proper completion of the disclosure ("Form 1295"), which the commission adopted on October 5, 2015, and revised on April 8, 2016, to be used by business entities to disclose interested parties in accordance with §2252.908. Section 46.5 also provides the manner in which a governmental entity or state agency shall notify the commission of the receipt of filings under the rule and the manner in which the commission shall make the disclosure of interested parties form available on the commission's Internet website.

The proposed amendment would change the phrase "goods or services" to "services, goods, or other property" to ensure that contracts regarding real estate are covered by the disclosure requirement. Further, the rule currently requires a governmental entity to notify the commission that it has received a completed disclosure of interested parties form and certification of filing not later than the 30th day after the date the contract is binding. The proposed amendment would change that day to the 30th day after the date the governmental entity or state agency received the disclosure, which closely tracks §2252.908.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of administering the amended rule.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarification in Chapter 46 of commission rules that real estate should be included in the description of the property used by the governmental entity or state agency provided under a contract covered by §2252.908, and to clarify when the commission should be notified of the receipt of documents required by §2252.908. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

The commission invites comments on the proposed amendment from any member of the public. A written statement should be emailed to *public_comment@ethics.state.tx.us,* or mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item relating to the proposed amendment. 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 amendment to §46.5 is proposed under Texas Government Code §2252.908(g), which requires and authorizes the commission to adopt rules necessary to implement Texas Government Code §2252.908.

The proposed amendment to §46.5 affects §2252.908 of the Texas Government Code.

§46.5. Disclosure of Interested Parties Form.

(a) A disclosure of interested parties form required by §2252.908 of the Government Code must be filed on an electronic form prescribed by the commission that contains the following:

(1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;

(2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;

(3) The name of each interested party and the city, state, and country of the place of business of each interested party;

(4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form

is being filed and a short description of the services, goods, or other property [~~services~~] used by the governmental entity or state agency provided under the contract; and

(5) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

(b) The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed.

(c) A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the governmental entity or state agency receives the disclosure [~~contract for which the form was filed binds all parties to the contract~~].

(d) The commission shall make each disclosure of interested parties form filed with the commission under §2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.

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

Filed with the Office of the Secretary of State on April 14, 2016.

TRD-201601751
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-5800

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.6

The Texas Health and Human Services Commission (HHSC) proposes new §353.6, concerning Audit of Managed Care Organizations.

BACKGROUND AND JUSTIFICATION

The purpose of the proposed new §353.6 is to implement §533.015, Texas Government Code, as amended by Senate Bills 200 and 207, 84th Legislature, Regular Session, 2015. Section 533.015(b) requires the HHSC Executive Commissioner to define the roles in, jurisdiction over, and frequency of audits of managed care organizations participating in Medicaid conducted by various divisions of HHSC, including the Office of the Inspector General (OIG).

The proposed new rule requires coordination between various divisions of HHSC in conducting such audits, as directed by the HHSC Executive Commissioner through specific policy directives.

SECTION-BY-SECTION SUMMARY

Proposed §353.6 clarifies that HHSC is responsible for the audit of managed care organizations participating in Medicaid, as well as the subcontractors of those organizations. The rule states that HHSC is to conduct various types of audits, including financial, performance, and compliance audits with the scope and frequency necessary to ensure effective management of managed care organizations, and as necessary to comply with applicable laws. The rule also states that the Executive Commissioner of HHSC will issue policy directives that outline the roles and responsibilities regarding the division of responsibility and coordination of managed care organization audits.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there is no expected impact to costs or revenues of state or local governments to implement and enforce the rule as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the proposed rule.

PUBLIC BENEFIT AND COSTS

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be more effective operation of Medicaid and greater accountability for participating managed care organizations.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy or negatively affect local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Jessica Morse, Special Advisor, 4900 North Lamar, Mail Code H-100, Austin, Texas 78751; by fax to (512) 730-7479; or by e-mail to *jessica.morse@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

In lieu of a public hearing, persons wishing to give verbal public comment on this proposed rule may do so at two public meetings at which this proposed rule will be presented. The first meeting is the Medical Care Advisory Committee scheduled for 9:00 a.m. on May 12, 2016, in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. The second meeting is the HHSC Council scheduled for 10:00 a.m. on May 20, 2016, in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations may contact Amy Chandler at (512) 487-3419.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §531.0055 and §531.033, which provide the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal. The proposed new rule seeks to implement §533.015, Texas Government Code, as amended by Senate Bills 200 and 207 of the 84th Legislature, Regular Session, 2015.

§353.6. Audit of Managed Care Organizations.

(a) HHSC is responsible for audits of participating MCOs.

(b) For purposes of this rule, the term "participating MCO" includes MCO subcontractors.

(c) HHSC conducts audits of participating MCOs, including financial audits, performance audits, and compliance audits:

(1) with the scope and frequency necessary to ensure the effective management and control of the MCOs; and

(2) as necessary to comply with all federal and state laws.

(d) The HHSC Executive Commissioner establishes policy outlining the roles and responsibilities of the divisions and offices of HHSC, including the Internal Audit Division, the Office of Inspector General, and the Medicaid/CHIP Division, in performing audits of participating MCOs.

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 April 13, 2016.

TRD-201601712
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §371.37

The Texas Health and Human Services Commission (HHSC) proposes new §371.37, concerning Audit of Managed Care Organizations.

BACKGROUND AND JUSTIFICATION

The purpose of the proposed new §371.37 is to implement §533.015, Texas Government Code, as amended by Senate Bills 200 and 207, 84th Legislature, Regular Session, 2015. Section 533.015(b) requires the Executive Commissioner to define the roles in, jurisdiction over, and frequency of audits of managed care organizations participating in Medicaid conducted by various divisions of HHSC, including the Office of the Inspector General (OIG).

The proposed new rule clarifies the roles of HHSC and the OIG with respect to audits of managed care organizations and requires coordination between HHSC and the OIG in conducting such audits.

SECTION-BY-SECTION SUMMARY

Proposed §371.37 clarifies that the OIG conducts regular audits of participating managed care organizations as directed by HHSC policy. The rule states that the OIG develops an audit plan in coordination with HHSC, and submits the OIG draft audit plan to HHSC for review and comment.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule is in effect, there is no expected impact to costs or revenues of state or local governments to implement and enforce the rule as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the proposed rule.

PUBLIC BENEFIT AND COSTS

Gary Jessee, State Medicaid Director, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit will be more effective operation of Medicaid and greater accountability for participating managed care organizations.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rule. The proposed rule will not affect a local economy or negatively affect local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Jessica Morse, Special Advisor, 4900 North Lamar, Mail Code H-100, Austin, Texas 78751; by fax to (512) 730-7479; or by e-mail to *jessica.morse@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

In lieu of a public hearing, persons wishing to give verbal public comment on this proposed rule may do so at two public meetings at which this proposed rule will be presented. The first meeting is the Medical Care Advisory Committee scheduled for 9:00 a.m. on May 12, 2016, in the John H. Winters Building, Public Hearing Room 125, located at 701 W. 51st Street, Austin, Texas 78751. The second meeting is the HHSC Council scheduled for 10:00 a.m. on May 20, 2016, in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations may contact Amy Chandler at (512) 487-3419.

STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code §§531.0055 and 531.033, which provide the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rule implements Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal. The proposed new rule seeks to implement §533.015, Texas Government Code, as amended by Senate Bills 200 and 207 of the 84th Legislature, Regular Session, 2015.

§371.37. Audit of Managed Care Organizations.

(a) The OIG plans and conducts regular audits of MCOs participating in Medicaid according to policy established pursuant to §353.6(d) of this title (relating to Audit of Managed Care Organizations).

(b) The OIG coordinates with HHSC in the development of risk assessments, audit plans, and findings to:

(1) minimize the duplication of activities relating to the audits of MCOs; and

(2) ensure that the OIG has a thorough understanding of the health and human services system for purposes of knowledgeably and effectively performing audits of MCOs.

(c) To facilitate coordination between the OIG and HHSC, the OIG annually develops and submits to HHSC's Executive Commissioner a draft audit plan identifying the OIG's planned audits of MCOs. The OIG considers input from HHSC, and previous audits and review findings of MCOs by HHSC, before finalizing the annual audit plan.

(d) Notwithstanding subsections (a), (b), and (c) of this section, the OIG may investigate, including by means of regular audits, allegations of suspected fraud, waste, or abuse by MCOs.

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 April 13, 2016.

TRD-201601713
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 424-6900

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

SUBCHAPTER B. ELIGIBILITY

DIVISION 9. CRIMINAL ACTIVITY

1 TAC §372.501

The Texas Health and Human Services Commission (HHSC) proposes to amend §372.501, concerning Disqualifications Due to Criminal Activity.

BACKGROUND AND JUSTIFICATION

In 2015, the 84th Legislature adopted Texas Human Resources Code §33.018, which modifies Supplemental Nutrition Assistance Program (SNAP) eligibility standards for certain individuals who have been convicted of felonies. *See* Act of May 28, 2015, 84th Leg., R.S., ch. 837, §2.29 (S.B. 200). As authorized by 21 U.S.C. §862a(d)(1), Texas Human Resources Code §33.018 affects SNAP eligibility in three ways. First, §33.018 removes the SNAP permanent disqualification for an individual with a felony drug conviction that occurred after August 22, 1996. Second, §33.018 requires that an individual who is convicted of a felony drug offense on or after September 1, 2015, and who does not comply with his or her parole or community supervision conditions is ineligible for SNAP for two years. Third, under §33.018, an individual who received a felony drug conviction on or after September 1, 2015, and who incurs a subsequent felony drug conviction while receiving SNAP is permanently disqualified from receiving SNAP. The permanent disqualification does not apply if an individual is convicted of a subsequent offense while not receiving SNAP.

The amendments to 1 Texas Administrative Code §372.501 implement Texas Human Resources Code §33.018.

SECTION-BY-SECTION

The proposed amendments to §372.501(b) describe the new requirements for SNAP if HHSC determines an individual is convicted of a felony drug offense (not deferred adjudication) in Texas or another state on or after September 1, 2015. If an individual violates parole or community supervision, he or she is disqualified from receiving SNAP benefits for two years. If the individual is convicted of a subsequent felony drug offense (not deferred adjudication) in Texas or another state while receiving

SNAP, he or she is permanently disqualified from receiving SNAP benefits.

To align with the effective date of Texas Human Resources Code §33.018, §372.501(b) repeals the date August 22, 1996, and replaces it with felony drug convictions occurring on or after September 1, 2015, when determining eligibility for SNAP.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five years the proposal is in effect, the rule is expected to result in costs to state government to implement and enforce the rule. The expected administrative costs are $20,000 General Revenue (GR) and $40,000 All Funds (AF) in State Fiscal Year (SFY) 2016, with no additional administrative costs anticipated in SFY 2017 through SFY 2020. There are expected direct client service costs to federal funds related to implementation of this rule, but there is insufficient data to project a fiscal estimate at this time. There is no anticipated impact to costs and revenues of local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rule, as the rule proposal pertains to individual eligibility for federal benefits and does no impact small businesses or micro-businesses in any way.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rule.

HHSC has determined that the amended rule will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule with 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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Deja Hill, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing will be scheduled during the 30-day period between April 29, 2016, through May 28, 2016, in the Winters Building, Public Hearing Room, 701 West 51st Street, Austin, Texas 78756. Confirmation of the specific date is pending; notice will be published when the date is finalized.

STATUTORY AUTHORITY

The amendments are proposed in accordance with Texas Human Resources Code §33.018, which modifies SNAP eligibility for certain individuals. Texas Government Code §531.0055 provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §33.052 provides HHSC with the authority to develop procedures to ensure that clear guidance on program eligibility requirements is provided to SNAP applicants and prospective applicants.

No other statutes, articles, or codes are affected by this proposal.

§372.501. Disqualifications Due to Criminal Activity.

(a) In TANF, a person is disqualified from receiving benefits if the Texas Health and Human Services Commission (HHSC) determines the person:

(1) is a fugitive (a person fleeing to avoid prosecution or confinement for a felony criminal conviction, or found by a court to be violating federal or state probation or parole); or

(2) is convicted of a felony drug offense (not deferred adjudication) in Texas or another state committed on or after April 1, 2002.

(b) In SNAP, a person is disqualified from receiving benefits as follows [~~if HHSC determines the person~~]:

(1) the person is disqualified from receiving SNAP benefits if HHSC determines the person is a fugitive (a person fleeing to avoid prosecution or confinement for a felony criminal conviction, or found by a court to be violating federal or state probation or parole); or

(2) the person is disqualified from receiving SNAP benefits for two years if HHSC determines the person is convicted of a felony drug offense (not deferred adjudication) in Texas or another state on or after September 1, 2015, and has violated his or her parole or community supervision; or

(3) [~~(2)~~] the person is disqualified from receiving SNAP benefits permanently if HHSC determines the person is convicted of a felony drug offense (not deferred adjudication) in Texas or another state on or after September 1, 2015, and, while receiving SNAP benefits, the person is convicted of a subsequent felony drug offense (not deferred adjudication) in Texas or another state [~~committed after August 22, 1996~~].

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 April 18, 2016.

TRD-201601839

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (commission) proposes amendments to §1.201, concerning Interpretations and Advisory Letters.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1980). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed changes provide clarification, improved grammar, better readability, and technical corrections. The purposes of amendments to individual subsections are provided in the following paragraphs.

In subsection (a), the proposal includes a new definition of the term "advisory letter." The definition identifies certain documents that are not advisory letters, such as official interpretations, advisory bulletins, and letters sent in connection with an examination or license application.

In subsection (a), the proposal also amends the definition of "interpretation" to use the term "official interpretation." This reflects the agency's convention of referring to interpretations issued under Texas Finance Code, §14.108 as "official interpretations," and helps avoid confusion with other types of statements that the agency issues. Subsections (a), (b), and (c) contain conforming changes to replace "interpretation" with "official interpretation," and to improve readability and clarity.

In subsection (d), the proposal includes new text for the notice that appears on advisory letters interpreting Texas Finance Code, Title 4, Subtitle A or B. The new text is intended to improve readability and clarity.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §1.201 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §1.201 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the public will more easily understand the commission's rules and the notice provided on the agency's advisory letters.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to *laurie.hobbs@occc.texas.gov.* To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register.* At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. In addition, the proposed amendment to subsection (b)(4) is authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Official Interpretations and Advisory Letters.

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter--A letter by the commissioner or an OCCC employee providing an informal advisory response to a question concerning a provision of law. The term does not include:

(A) an official interpretation;

(B) an advisory bulletin addressed to a body of stakeholders;

(C) instructions for submitting required information to the OCCC (e.g., annual report instructions);

(D) a report or study provided to the Texas Legislature or the Finance Commission of Texas; or

(E) a letter sent in connection with an examination, investigation, license or registration application, complaint, or enforcement action.

[~~(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (4) of this subsection.~~]

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(3) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(4) Official interpretation [~~Interpretation~~]--A letter issued by the commissioner and approved by the Finance Commission of Texas under [~~pursuant to~~] Texas Finance Code, §14.108 interpreting

a provision of Texas Finance Code, Title 4, Subtitle A or B in light of [certain] relevant facts provided by a [the] requestor.

(b) Required information for official interpretation request. Any person may submit a request for an official interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting official interpretation. The requestor must state explicitly [An explicit statement] that an official interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. The requestor must provide a [A] concise description of the contemplated transaction or activity [contemplated], the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. The requestor must state [A statement] whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. The agency will charge a $500 fee [A fee of $500 will be charged] for an official interpretation to compensate the agency for the expense involved in researching and answering the request. The requestor should submit the payment of $500 [should be submitted] with the request. The agency may [determine and] remit a partial or full refund if deemed appropriate [applicable]. The agency may waive the fee.

(5) Additional information. The [A] requestor should [also] identify each provision of law involved, state [and indicate] the requestor's opinion of how the legal issues should be resolved, and state the basis for that opinion, including an analysis of any relevant court decisions or related official interpretations[, as well as, all prior interpretations to which the request relates].

(c) Processing an official interpretation [of] request. Within 10 business days of receiving [receipt of] a valid request under subsection (b), the agency will file [pursuant to this subsection,] the request [will be filed] with the Texas Register for publication. Within 31 calendar days of [Upon] publication in the *Texas Register,* any person [party] may [within 31 calendar days] submit briefs or proposals pertaining to the request.

(1) Official interpretation [Interpretation] not issued. After publication of a valid request for an official interpretation, the agency may decline to issue an official interpretation. A summary of the agency's reasons for deciding not to issue an official interpretation will be published in the *Texas Register.*

(2) Approved official interpretation. If the agency drafts an official interpretation, then the agency will present the official interpretation [The agency may draft an interpretation or a response and present it] to the Finance Commission of Texas for approval. If the Finance Commission approves the official interpretation, then within [consideration. Within]. 10 business days of the approval, the agency will file [of an interpretation by the Finance Commission of Texas,] a summary of the official interpretation [will be filed] with the Texas Register for publication. Copies of official interpretations will [shall] contain a statement [notation] of approval and the date of action by the Finance Commission [of Texas].

(d) OCCC advisory letters. If the OCCC sends an advisory letter concerning a provision of Texas Finance Code, Title 4, Subtitle A or B, then the advisory letter will include the following statement: "This advisory letter is not an official interpretation approved by the Finance Commission of Texas. The requirements for requesting an official interpretation are in Title 7, Section 1.201(b) of the Texas Administrative Code." [Each advisory letter issued by the OCCC must contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)."]

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 April 15, 2016.

TRD-201601760
Leslie L. Pettijohn
Consumer Credit Commissioner
Finance Commission of Texas
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 936-7621

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 24. CEMETERY BROKERS

7 TAC §24.1

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §24.1, concerning registration of cemetery brokers. The amendments are proposed to specify times for department processing of cemetery broker registrations.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013 by the commission in the form of 7 TAC Chapter 24. Proposed amendments to §24.1 reduce from 45 days to 15 days the amount of time the department has to notify a registrant whether the registration is complete, and states that the department will process registrations within 30 days of the department's notification that the registration has been accepted for filing.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that entities wishing to register as cemetery brokers will have clear expectations regarding the times within which their registrations will be processed by the department.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amended rule is proposed under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the proposed amended rule.

§24.1. Registration.

(a) (No change.)

(b) The department shall notify each registrant within 15 [~~45~~] days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.

(c) On or before the 30th day after the date the department accepts the registration for filing, the banking commissioner will approve or deny the registration and advise the registrant in writing of the decision.

(d) [~~(c)~~] Registration as a cemetery broker is not transferable.

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 April 15, 2016.

TRD-201601771
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

7 TAC §24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §24.4, concerning appeal of processing time for cemetery broker registrations. The new rule is proposed to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule is proposed to conform to Texas Government Code §2005.006.

In 2013, the Texas Legislature passed House Bill 52, which required cemetery brokers to register with the department. The rules stating requirements for registration of these entities were adopted in December 2013 by the commission in the form of 7 TAC Chapter 24. Proposed new §24.4 establishes the process by which an entity seeking to register as a cemetery broker may complain to the banking commissioner if the department fails to comply with the registration processing times specified in §24.1.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that entities wishing to register as cemetery brokers will have a method for complaining to the banking commissioner if the processing deadlines are not met.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The new rule is proposed under Health and Safety Code, §711.012 and §711.0381, which provide the authority to adopt rules regarding registration of cemetery brokers with the banking commissioner.

Health and Safety Code, §711.046 is affected by the proposed new rule.

§24.4. Appeal of Delay in Registration Processing Times.

(a) If the department does not process a registration within the time periods specified in §24.1 of this title, a registrant may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief requested. The department must receive the complaint on or before the 30th day after the date the banking commissioner approves or denies the registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review the written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon the complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify the complainant of the decision regarding the complaint on or before the 60th day after the date the commissioner receives the written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse all of the complainant's registration fees.

(g) A decision in a complainant's favor under this section does not affect any decision by the banking commissioner to grant or deny a registration. The decision to grant or deny a registration is based upon applicable substantive law without regard to whether the department timely processed the registration.

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 April 15, 2016.

TRD-201601773
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.18

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.18, concerning when an application is abandoned. The amended rule is proposed to clarify the conditions and procedures for determining and communicating that an application has been abandoned.

The proposed amendments streamline and make consistent the procedures for the department to determine whether an application has been abandoned. The proposed amendments are intended to enhance the opportunity for communication between child support enforcement agency applicants and the department.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the amended rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is that fewer applications for child support enforcement agencies will be abandoned.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendments are proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed amended section.

§31.18. When is an application [~~or notice~~] submitted by my agency abandoned?

(a) Subject to subsection (b) of this section, the department must receive all information required to consider your application complete and to accept it for filing on or before the 61st day after the date the department receives your initial application.

(b) Upon a finding of good and sufficient cause, the banking commissioner shall grant an applicant additional time to complete the application. Extensions will be communicated to the applicant before the expiration of the filing period.

(c) After reviewing the information you provide in response to the department's request for additional information, the department may determine that still more information is required to consider your application complete and to accept it for filing. The department will notify you in writing if further information is required and specify the date by which the department must receive the information.

(d) If you do not provide the required information, the banking commissioner may determine that your application is abandoned, without prejudice to your right to file a new application.

(e) The banking commissioner will notify you in writing if your application is considered abandoned. The commissioner's determination is effective the date the department mails you the notice and may not be appealed. The department will not refund the fee you paid in connection with the abandoned application.

[~~(a) If you provide all required information on or before the 61st day after your agency submits an application or notice, the banking commissioner will accept it. Prior to the end of the initial 60-day period, you may request an automatic 30-day extension of time to submit required information. An additional extension may be requested in writing if your request is received prior to the expiration of the automatic extension. The additional extension will be granted only if the banking commissioner in the exercise of discretion finds that you have good and sufficient cause for the extension. The banking commissioner will mail notice of the decision to you within ten days of receipt of the request by the department.~~]

[~~(b) If you do not timely pay a fee or timely furnish information required by applicable law, rule, or request for additional information, then the banking commissioner may determine that your application or notice is abandoned. The banking commissioner will notify you in writing that it is abandoned.~~]

[~~(c) Any filing fees you paid related to an abandoned application or notice are refundable. Any filing fee you did not pay related to an abandoned application or notice remain due and payable from you to the department. If paid, the fee for cost of regulation will be refunded to you.~~]

[~~(d) If your application or notice is considered abandoned, you may file it again without prejudice. A new filing fee will be required.~~]

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 April 15, 2016.

TRD-201601774
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

7 TAC §31.19

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §31.19, concerning how to register an agency to engage in the business of private child support enforcement. The amended rule is proposed to clarify the time for department processing of private child support enforcement agency registrations.

The proposed amendment reduces from 60 days to 45 days the time the department will have to notify a registrant that its registration is approved or referred to the administrative law judge for notice and opportunity for hearing. The proposed amendment is intended to shorten and simplify the registration process for registrants seeking to engage in this business.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the amended rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amended rule is that the time for processing a registration of a private child support enforcement agency will be reduced.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The amendment is proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed amended section.

§31.19. When and how will my agency's certificate of registration be issued and mailed?

(a) On or before the 45th [~~60th~~] day after the date your application is accepted for filing the banking commissioner will either:

(1) approve your application by issuing a certificate of registration for each location approved; or

(2) refer your application to the administrative law judge for notice and opportunity for hearing under Chapter 9 of this title.

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

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

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 April 15, 2016.

TRD-201601775
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

7 TAC §31.20

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §31.20, concerning how to register an agency to engage in the business of private child support enforcement. The new rule is proposed to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. The new rule is proposed to conform to Texas Government Code §2005.006.

Proposed new §31.20 establishes the process by which an entity seeking to register as a private child support enforcement agency may complain to the banking commissioner if the department fails to comply with the application processing time periods specified in Subchapter B.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the new rule.

Mr. Bacon also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the new rule is that entities seeking to register as private child support enforcement agencies will have a method for complaining to the banking commissioner if the processing deadlines are not met.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new rule must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The new rule is proposed under Finance Code, §396.051, which authorizes the commission to adopt necessary rules to administer the chapter concerning private child support enforcement agencies.

Finance Code, §396.101, is affected by the proposed new section.

§31.20. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods specified in Subchapter B of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The

department must receive your complaint on or before the 30th day after the date the commissioner approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(g) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether the department timely processed your registration.

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 April 15, 2016.

TRD-201601777
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

♦ ♦ ♦

CHAPTER 35. CHECK VERIFICATION ENTITIES

SUBCHAPTER B. REGISTRATION OF CHECK VERIFICATION ENTITIES

7 TAC §35.18, §35.19

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §35.18 and §35.19, concerning registration of check verification entities. The new rules are proposed to specify times for department processing of check verification entity registrations, and to provide a procedure for registrants to complain to the banking commissioner in the event the registration is not processed within the prescribed time periods. New §35.19 is proposed to conform to Texas Government Code §2005.006.

Proposed new §35.18 establishes specific time periods within which the department will process registrations for check verification entities. Proposed new §35.19 establishes the process by which an entity seeking to register as a check verification entity may complain to the banking commissioner if the department fails to comply with the registration processing times specified in proposed new §35.18.

Robert L. Bacon, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rules.

Mr. Bacon also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that entities wishing to register as check verification entities will have clear expectations regarding the times within which their registrations will be processed by the department, and will have a method for complaining to the banking commissioner if the processing deadlines are not met.

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

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on May 30, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov.*

The new rules are proposed under Finance Code, §11.309(b), which provides the authority to adopt rules requiring check verification entities to register with the banking commissioner.

Finance Code, §11.309, is affected by the proposed new sections.

§35.18. How long will the department take to process my registration?

(a) On or before the 15th day after the date the department receives your registration form, the department will notify you in writing that:

(1) your registration form is incomplete and specify the additional information required before the department will accept your registration for filing; or

(2) your registration is complete and accepted for filing.

(b) On or before the 30th day after the date the department accepts your registration for filing, the banking commissioner will approve or deny your registration and advise you in writing of the decision.

§35.19. What remedy is available if the department does not comply with the registration processing times?

(a) If the department does not process your registration within the time periods specified in §35.18 of this title, you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint on or before the 30th day after the date the commissioner approves or denies your registration.

(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding your complaint that includes any facts on

which the division relies to show that good cause existed for exceeding the applicable time period.

(c) The banking commissioner will review your written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.

(d) The banking commissioner will determine, based upon your complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.

(e) The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your registration fees.

(g) A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your registration. The decision to grant or deny your registration is based upon applicable substantive law without regard to whether the department timely processed your registration.

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 April 15, 2016.

TRD-201601779
Catherine Reyer
General Counsel
Texas Department of Banking
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1301

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. RESIDENTIAL MORTGAGE LOAN SERVICERS

SUBCHAPTER A. REGISTRATION

7 TAC §79.1, §79.2

The Finance Commission of Texas (the commission) on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §79.1 and §79.2 in 7 TAC Chapter 79, Subchapter A, concerning registration.

In general, the purpose of the proposal regarding these rules is to implement changes resulting from the commission's review of Chapter 79 under Texas Government Code §2001.039.

Section 79.1 addresses definitions. The proposed amendments reorganize the terms and defines the Act.

Section 79.2 addresses required disclosures. The proposed amendments emphasize that the required disclosure is only necessary for the servicing of residential mortgage loans on real estate located in Texas. It further requires the posting of the disclosure on the registrant's website.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §158.003, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Servicers.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 158.

§79.1. Definitions.

As used in this chapter, the following terms have the meanings indicated:

[~~(a) "Department" means the Department of Savings and Mortgage Lending.~~]

[~~(b) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).~~]

(1) [~~(c)~~] "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) [~~(d)~~] "Commissioner's designee" means an employee of the Department performing his or her assigned duties such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) "Department" means the Department of Savings and Mortgage Lending.

(4) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(5) [~~(e)~~] "Person" means an individual, corporation, company, limited liability company, partnership or association.

(6) The "Act" means the Residential Mortgage Loan Servicer Registration Act, as provided by Finance Code, Chapter 158.

§79.2. Required Disclosure.

(a) For the servicing of residential mortgage loans on real estate located in Texas, pursuant to Texas Finance Code §158.101 a [~~A~~] registrant shall provide to the borrower of each residential mortgage loan the disclosure contained in the following figure not later than the 30th day after the registrant begins servicing the loan.

(b) In order to let borrowers know how to file complaints with the Department, Residential Mortgage Loan Servicer registrants servicing residential mortgage loans on real estate located in Texas, must include the disclosure contained in the following figure in all correspondence provided to the borrowers. This written notice shall

not be provided regarding the servicing of residential mortgage loans on real estate which is not located in Texas. Registrants servicing residential mortgage loans on real estate located in Texas, shall also post the disclosure in the following figure on their website, with a statement to reflect that such disclosure notice only applies to the residential mortgage loans on real estate located in Texas:

Figure: 7 TAC §79.2(b) (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 April 15, 2016.

TRD-201601822
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 80. TEXAS RESIDENTIAL MORTGAGE LOAN COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §80.2

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §80.2 in 7 TAC Chapter 80, Subchapter A, concerning definitions.

In general, the purpose of the proposal regarding this rule is to implement changes resulting from the commission's review of Chapter 80 under Texas Government Code §2001.039.

Section 80.2 addresses definitions. The proposed amendments reorganize the terms to reflect an alphabetical order, and introduce several new terms to create parity with 7 TAC Chapters 79 (regarding Residential Mortgage Loan Servicers) and 81 (regarding Mortgage Bankers and Residential Mortgage Loan Originators).

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §156.102, which provides that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 156.

§80.2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

(1) (No change.)

(2) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(3) [~~(2)~~] "Commissioner's designee" means an employee of the Department [~~department~~] performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 156.

(4) [~~(3)~~] "Company" means, for purposes of this chapter, a residential mortgage loan company, as that term is defined in Finance Code, §156.002.

(5) [~~(4)~~] "Control Person" means an individual that directly or indirectly exercises control over a company. Control is defined by the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that:

(A) is a director, general partner or executive officer;

(B) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;

(C) in the case of an LLC, managing member; or

(D) in the case of a partnership, has the right to receive upon dissolution, or had contributed, 10% or more of the capital, is presumed to control that company.

(6) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Fi-

nance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(7) "Department" means the Department of Savings and Mortgage Lending.

(8) "Nationwide Mortgage Licensing System and Registry" has the meaning assigned by Finance Code §180.002(12).

(9) [~~(5)~~] "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest in any such real property, on which a one-to-four family dwelling, including a manufactured home, is being or is to be constructed or situated.

(10) [~~(6)~~] "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a licensee need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(11) [~~(7)~~] "Qualifying Individual" shall have the same meaning as that provided in Finance Code, §156.002. Additionally, the license held by the qualifying individual must be held in a status, which authorizes them to conduct regulated activities, and is sponsored by the company for which they are the qualifying individual.

(12) [~~(8)~~] "Residential Mortgage Loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

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 April 15, 2016.

TRD-201601826
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §80.204, §80.205

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §80.204 and §80.205 in 7 TAC Chapter 80, Subchapter C, concerning duties and responsibilities.

In general, the purpose of the proposal regarding these rules is to implement changes resulting from the commission's review of Chapter 80 under Texas Government Code §2001.039.

Section 80.204 concerns books and records. The proposed amendment adds clarifying language.

Section 80.205 addresses mortgage call reports. The proposed amendment emphasizes that the term, "administrative action", includes the assessment of an administrative penalty.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §156.102, which provide that the Finance Commission may adopt rules relating to Residential Mortgage Loan Companies.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 156.

§80.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) - (h) (No change.)

§80.205. Mortgage Call Reports.

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

(d) Failure to file a mortgage call report or a statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

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 April 15, 2016.

TRD-201601823
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §81.2

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §81.2 in 7 TAC Chapter 81, Subchapter A, concerning general provisions.

In general, the purpose of the proposal regarding this rule is to implement changes resulting from the commission's review of Chapter 81 under Texas Government Code §2001.039.

Section 81.2 addresses definitions. The proposed amendments reorganize the terms to reflect an alphabetical order, and introduce new terms to create parity with 7 TAC Chapters 79 (concerning Residential Mortgage Loan Servicers) and 80 (concerning Texas Residential Mortgage Loan Companies) to enhance clarity.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering this rule.

Commissioner Jones also has determined that, for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §157.023, which provide that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

§81.2. Definitions.

As used in this chapter, the following terms have the meanings indicated:

(1) "Commissioner" means the Savings and Mortgage Lending Commissioner.

(2) [~~(1)~~] "Commissioner's designee" means an employee of the department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in Finance Code, Chapter 157.

(3) [~~(2)~~] "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the solicitation of, the giving of, or the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered with other violations committed over a period of time appears to establish a pattern of disregard for, a lack of respect for, or apparent inability to follow, the criminal law; or

(H) involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as an originator in a manner consistent with the purposes of Finance Code, Chapter 157 and the best interest of the State of Texas and its residents.

(4) [~~(3)~~] "Department" means the [~~Texas~~] Department of Savings and Mortgage Lending.

(5) [~~(4)~~] "Mortgage banker" shall have the same meaning as that provided in Finance Code, §157.002.

(6) [~~(5)~~] "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting residential mortgage loan applications are conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of an originator need not be the location at which such originator's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for examination during normal business hours.

(7) [~~(6)~~] "Residential mortgage loan" shall have the same meaning as that provided in Finance Code, §180.002 and includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential use, and is not used as a residence.

(8) "Residential mortgage loan originator" has the meaning assigned in Finance Code, §180.002.

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 April 15, 2016.

TRD-201601824
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

7 TAC §81.204, §81.205

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes to amend §81.204 and §81.205 in 7 TAC Chapter 81, Subchapter C, concerning duties and responsibilities.

In general, the purpose of the proposal regarding these rules is to implement changes resulting from the commission's review of Chapter 81 under Texas Government Code §2001.039.

Section 81.204 addresses books and records. The proposed amendment adds clarifying language.

Section 81.205 addresses mortgage call reports. The proposed amendment emphasizes that the term, "administrative action", includes the assessment of an administrative penalty.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering these rules.

Commissioner Jones also has determined that, for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result will be that the Department's rules will be more accurate. There will be no effect on individuals required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses and no difference in the cost of compliance for small businesses as compared to large businesses.

Comments on the proposed amendments may be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar, Suite 201, Austin, Texas 78705 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register.*

The amendments are proposed under Texas Finance Code §157.023, which provides that the Finance Commission may adopt rules relating to Mortgage Bankers and Residential Mortgage Loan Originators.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 157.

§81.204. Books and Records.

(a) In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under Finance Code, Chapter 157 and this chapter, each originator shall maintain records as set forth in this section. The particular format of records to be maintained is not specified. However, they must be accurate, complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(b) - (h) (No change.)

§81.205. Mortgage Call Reports.

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

(d) Failure to file a mortgage call report or statement of condition report may result in administrative action, which includes the assessment of an administrative penalty.

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 April 15, 2016.

TRD-201601825
Ernest C. Garcia
General Counsel
Department of Savings and Mortgage Lending
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1297

♦ ♦ ♦

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §§82.1 - 82.4

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 82, concerning Administration. The commission proposes amendments to all four rules contained in Chapter 82: §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; §82.3, concerning Request for Criminal History Evaluation Letter; and §82.4, concerning Consumer Complaint Process.

In general, the purpose of the amendments to Chapter 82 is to implement changes resulting from the commission's review of this chapter under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the *Texas Register* on March 11, 2016 (41 TexReg 1979). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed amendments update authorized viewers of criminal history information, update public information procedures, clarify the requirements to request a criminal history evaluation letter, clarify the recipients of consumer complaint procedures, and make technical corrections. The individual purposes of the amendments to each rule are provided in the following paragraphs.

The purpose of the amendments to §82.1 is to update the list of agency employees who have access to criminal history record in-

formation, and to make technical corrections that improve readability. The proposed amendments to §82.1 implement Texas Government Code, §411.095, as amended by Senate Bill (SB) 1075 (effective September 1, 2015), relating to criminal history record information obtained by the Office of Consumer Credit Commissioner (OCCC). SB 1075 amended Texas Government Code, §411.095 by adding the following to the list of persons about whom the OCCC can obtain criminal history record information: (1) an employee or volunteer with the OCCC, (2) an applicant for employment with the OCCC, and (3) a contractor or subcontractor of the OCCC.

In §82.1(a), definitions of "commissioner," "criminal history record information," and "OCCC" have been added. In §82.1(b) (current subsection (a)), the provisions referring to the OCCC's use of criminal history record information have been updated to cite Texas Government Code, §411.095. In §82.1(c) (current subsection (b)), the list of agency employees with access to criminal history record information has been updated to include the following employees: the director of strategic communications, administration and planning; and the human resources specialist. These changes reflect the agency's practice. The commissioner has authorized the human resources specialist to review criminal history record information in evaluating applicants for employment. In addition, the director of strategic communications, administration and planning may review criminal history record information in evaluating employees, applicants for employment, contractors, and subcontractors. Subsection (c) also includes changes to improve readability and conform to the definition of "commissioner."

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

The OCCC has recently transferred its public information duties to the legal department and along with that reorganization, has reviewed and updated its public information procedures.

In subsection (a) of §82.2 concerning definitions, the term defined in paragraph (5) has been updated to match the one used by the Office of the Attorney General (OAG) in 1 TAC §70.2. Accordingly, the OAG term "Standard paper copy" is proposed to replace the term "Standard-size copy" in §82.2(a)(5).

Subsection (b) of §82.2 includes several proposed amendments to provide clarification regarding the initial receipt of public information requests by the OCCC. Subsection (b) has been divided into five paragraphs in order to provide better readability. The existing language in §82.2(b) through the phrase "normal business activities" has been retained under new paragraph (1) with the tagline "Generally." The following new closing sentence has been added to proposed §82.2(1) for clarity: "All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally." The remaining language from current subsection (b) has been relocated into new paragraph (4) "Confidential information," and new paragraph (5) "Fee waiver or reduction."

Two new paragraphs proposed in §82.2(b) relate to requests received via email, and those received by other methods. Proposed new §82.2(b)(2) requires that public information requests submitted via email must be sent to the OCCC's designated public information officer, as authorized by Texas Government Code, §552.301(c). Directing requests for public information submitted via email to the public information officer or designee serves to streamline the agency's public information process, and will ensure that all email requests are handled timely and consistently.

Proposed new §82.2(b)(3) provides the agency's address for requests delivered by mail or hand delivery, and the fax number for requests sent by facsimile. This provision reflects the agency's existing policy for requests received by these methods, providing more clarification in the rule.

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions to better reflect current agency practice and provide clarity for requestors of public information. Introductory language is proposed for addition to subsection (c) citing use of the applicable charges established by the OAG. The proposed amendments to §82.2(c) clarify that the charges outlined are the most common charges the OCCC collects to produce copies of public information, but that they may be supplemented or modified as authorized by the OAG cost rules.

In §82.2(c)(1) and (2), references relating to number of pages have been removed, as the OCCC's updated public information procedures will generally not involve a copy charge per page (unless paper copies are requested). Additionally, the proposed amendments throughout §82.2(c)(1) - (2) better align with the agency's use and requestors' receipt of electronic records.

The proposed amendments to §82.2(c)(1) clarify that no fees will be collected for requests resulting in charges of $5 or less. This provision is similar to the current language, which states that no fee will be charged for 50 or fewer pages ($0.10 per page x 50 pages = $5). However, the proposed language would also reflect that labor time of $5 or less would also not be collected. It is the OCCC's understanding that most state Texas agencies do not collect fees for requests under a certain minimal dollar amount.

The proposed amendments to §82.2(c)(2) outline the application of charges to requests for public information received by the OCCC. In subparagraph (A), the clarifying phrases "copy charge" and "if paper copies are requested" are proposed to clarify when $0.10 per page will be charged. In subparagraph (B) regarding the existing $15 per hour of personnel time, the following language is proposed to provide more detail concerning the actions that may be charged for: "locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare." All of these actions are currently authorized by the OAG and used by the OCCC personnel to prepare public information. The proposed language reflects this policy and provides better clarity to requestors. In addition, the phrase "labor or" is proposed for addition before "personnel time," as these two terms are often used interchangeably.

Proposed new subparagraph (C) in §82.2(c)(2) provides for a 20% overhead charge, calculated by multiplying the total personnel cost by 0.20. This 20% overhead charge is authorized by OAG cost rule 1 TAC §70.3(e). The OCCC has decided to begin charging requestors of public information an overhead charge, as the agency and requestors have shifted more to electronic records. An increasing number of the agency's requests involve manipulation of data into electronic spreadsheets, and the labor involved to compile information from the OCCC's databases can result in significant personnel time. Therefore, the controlling cost factor to produce public information is personnel time, and the resulting 20% overhead charge reflects that time.

Section 82.2(c)(3) related to requests for not readily available information is proposed for deletion. While the cited OAG

regulation is still valid and available should the agency need it, the OCCC believes it is no longer necessary to include in the agency's rule.

Since the adoption of this provision, the OCCC no longer maintains information at a remote storage location (aside from records stored at the Texas State Library and Archives Commission). In addition to increased digital storage of agency records, the OCCC has implemented an online license application system, where applicants upload documents directly to web-based cloud storage. The OCCC is currently working on a new IT project to include other agency functions, which will result in cloud storage of more types of agency records. Thus, subsection (c)(3) is proposed for deletion as access to remote storage will become less relevant to OCCC records. As a result of this proposed deletion, the remaining paragraphs have been renumbered accordingly.

Amendments are proposed in §82.2(c)(4) concerning certification to clarify that in addition to certifying copies, the OCCC also provides certified statements that verify information compiled from the OCCC's records. In addition to the commissioner, the proposed amendments include the option for a designated custodian of records to sign the certification.

In proposed §82.2(c)(4) (current (c)(5)), the term has been updated to match the one used by the OAG in 1 TAC §70.3. Accordingly, the OAG term "Nonstandard copy" is proposed to replace the term "Non-standard-size copy" in §82.2(c)(4).

In §82.2(d)(2) regarding expedited delivery, the proposed amendments clarify that a requestor must ask and the agency must agree to provide public information by overnight delivery service or other expedited delivery. A sentence is proposed for addition at the end of the provision to further clarify that the requestor must pay for this service.

Section 82.2(d)(3) is proposed for deletion, as the OCCC will no longer charge for electronic copies of pages that had to be scanned or copied in order to redact confidential information.

In §82.2(e)(2) regarding redaction of confidential information prepared for inspection, references relating to number of pages have been removed and replaced with references to "paper records." The proposed amendments state that if confidential information must be redacted prior to requestor's inspection of paper records, the agency may charge $0.10 per page to prepare the redacted pages.

Two new paragraphs proposed in §82.2(e) relate to inspection of records. Proposed new §82.2(e)(3) provides that labor charges may be assessed if production of electronic information requires programming or manipulation of data prior to inspection. Proposed new §82.2(e)(4) states that the OCCC will send a cost estimate should a request for inspection result in charges over $40. Proposed new §82.2(e)(3) and (4) reflect the agency's existing policy for requests to inspect records, providing more clarification in the rule. As a result of the two new paragraphs, the remaining paragraph has been renumbered accordingly.

Additional changes throughout §82.2 improve readability and clarity, and provide technical corrections.

The purpose of the amendments to §82.3 is to clarify the requirements for requesting a criminal history evaluation letter. The proposed amendments to §82.3 implement Texas Occupations Code, §53.102, which allows a person to request that a licensing authority issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person: (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license, and (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

In §82.3(a), definitions of "agency or OCCC," "commissioner," and "principal party" have been added. In §82.3(b) (current subsection (a)), the provisions relating to the rule's purpose have been updated for readability and clarity. In §82.3(c) (current subsection (b)), the provisions relating to the rule's applicability have been updated to specify the individuals and business entities that may request the criminal history evaluation letter. The proposed amendments include references to the enrollment and examination requirement in Texas Occupations Code, §53.102(a)(1). In §82.3(d) (current subsection (c)), the provisions regarding required information have been updated to require a description of any educational program that the requestor is planning to enroll in, as well as a description of any examination that the requestor is planning to take. In §82.3(f) (current subsection (e)), the fee provisions have been amended to specify that the requestor must pay a fingerprint-processing fee to a party designated by the Texas Department of Public Safety (DPS), rather than a $40 fingerprint-processing fee to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program. Additional changes throughout §82.3 improve readability and clarity.

The purpose of the amendments to §82.4 is to clarify the requirements for consumer complaints under Texas Finance Code, §14.062. In §82.4(b), a definition of "OCCC" has been added. Proposed new subsection (c) explains that as provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution. In §82.4(d) (current subsection (c)), the text of the rule has been updated to specify that if the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then the OCCC is not required to send the policies and procedures to the subject of the complaint or the source of the complaint. Additional changes throughout §82.4 improve readability and clarity.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to Chapter 82 are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the amendments to Chapter 82 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will conform to current practice, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed changes contained in new subsection (c)(2)(C) of §82.2 relating to overhead charged on public information requests.

As stated earlier, the OCCC has recently transferred its public information duties to the legal department and has reviewed

and updated its public information procedures. As part of that process, the agency decided to discontinue certain charges and to implement others, all of which are authorized by the existing charges under the Texas Public Information Act (TPIA) and the regulations of the Office of the Attorney General (OAG).

In particular, the OCCC has decided to begin charging requestors of public information an overhead charge, which is calculated by multiplying the total personnel cost by 20%. As the agency and requestors have shifted more to electronic records, the charges for paper copies have been in decline. Furthermore, an increasing number of the agency's requests involve manipulation of data into electronic spreadsheets that do not involve a traditional page count. The labor involved to compile information from the OCCC's databases can result in significant personnel time. Thus, the controlling cost factor to produce public information is personnel time, which does not necessarily relate to number of pages produced. The OCCC believes that the collection of overhead as a percentage of personnel time, as currently authorized by the TPIA and OAG regulations, is necessary and appropriate to help offset the agency's costs in producing public information.

Concerning the anticipated costs to comply with the proposed amendments to §82.2, many requests do not result in any fees, do not involve fees over $5 (which are not collected), or do not involve personnel time. For those requests, there will be no anticipated costs to comply with the proposal. For requests that do result in fees over $5 and do involve personnel time, the anticipated costs to requestors are unpredictable. The public information requests received by the OCCC are widely varying in scope and nature. Thus, the personnel time to produce the information and resulting 20% overcharge charged for that time depend on the individual request, and are calculated on a case-by-case basis.

Aside from the anticipated cost of overhead to produce certain requests for public information, there will be no other effect on individuals required to comply with the amendments to §82.2 as proposed.

Regarding the proposed changes to §§82.1, 82.3, and 82.4, there is no anticipated cost to persons who are required to comply with the amendments as proposed. Also regarding these three rules, there will be no effect on individuals required to comply with the amendments as proposed.

With respect to all of the proposed amendments to Chapter 82, there will be no adverse economic effect on small or micro-businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposed amendments are published in the *Texas Register.* At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. The proposed amendments to §82.2 are authorized under Texas Finance Code, §14.107(a), which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner's powers under Chapter 14. Additionally, Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The proposed amendments to §82.3 are authorized by Texas Occupations Code, §53.105, which authorizes a licensing authority to charge a fee for a criminal history evaluation letter, in an amount necessary to cover the cost of administering Texas Occupations Code, Chapter 53, Subchapter D.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Criminal history record information--Has the meaning provided by Texas Government Code, §411.082(2).

(3) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(b) Use of criminal history record information. The OCCC may obtain criminal history record information under Texas Government Code, §411.095 and Texas Finance Code, Chapter 14, Subchapter D. The OCCC's use of criminal history information is limited to evaluating a person described by Texas Government Code, §411.095(a). All criminal history record information received by the OCCC is confidential and is for the exclusive use of the OCCC. The OCCC may not disclose criminal history record information except as provided by Texas Government Code, §411.095(b).

[~~(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC or in determining the character and fitness of a current license holder of the OCCC. All criminal history record information received by the OCCC is confidential information and is for the exclusive use of the OCCC. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.~~]

(c) [~~(b)~~] Employee access. Access to criminal history record information maintained by the OCCC will be limited to the following persons:

(1) the commissioner [~~Consumer Credit Commissioner~~];

(2) any assistant commissioner;

(3) any attorney employed by the OCCC or an assistant attorney general representing the interest of the OCCC;

(4) employees of the licensing section;

(5) the director of consumer protection;

(6) the public information officer;

(7) the director of strategic communications, administration and planning;

(8) the human resources specialist;

(9) [~~(7)~~] any person appointed to act on behalf of or in the stead of any of the above; and

(10) [~~(8)~~] any employee of the OCCC who:

(A) [~~that~~] requires access to criminal history record information in order to fulfill the employee's duties; and

(B) is [~~as designated and~~] approved by the commissioner or the director of consumer protection to view criminal history record information [~~a party provided in paragraph (1) or (5) of this subsection~~].

§82.2. Public Information Requests; Charges.

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261.

(5) Standard paper [~~Standard-size~~] copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will be counted as two copies.

(b) Receipt of public information request.

(1) Generally. Upon receipt of a written request from a requesting party which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities. All requests will be processed in accordance with the Texas Public Information Act, and all requests will be treated equally.[~~, on condition that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.~~]

(2) Requests by email directed to OCCC public information officer or designee. Public information requests submitted via email must be sent to the OCCC's designated public information officer.

(3) Requests sent by other methods. Public information requests, other than email requests, may be submitted to the OCCC as follows:

(A) By mail or hand delivery. Submit the request to Public Information Officer, Office of Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, TX 78705; or

(B) By fax. Submit the request to (512) 936-7610.

(4) Confidential information. Information that is confidential by law will not be provided except under court order, attorney general directive, or other legal process.

(5) Fee waiver or reduction. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267.

(c) Copy and service charges. The cost to any person requesting copies of public information from the OCCC will be the applicable charges established by the Office of the Attorney General under Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information). This subsection outlines the OCCC's most common charges to produce copies of public information. These charges may be supplemented or modified as authorized by 1 TAC Chapter 70.

(1) Fees not collected [~~50 pages or fewer~~]. No fee will be collected [~~charged~~] for requests resulting in charges of $5 or less [~~for 50 or fewer standard-size copies of public information~~].

(2) Application of charges. The [~~More than 50 pages. For standard-size copies of more than 50 pages of public information, the~~] following charges may [~~will~~] apply to requests for public information:

(A) $0.10 copy charge per page if paper copies are requested; [~~and~~]

(B) $15 per hour of labor or personnel time spent to locate (including pulling documentation from archives), compile, manipulate (including redacting mandated confidential information), reproduce, and prepare [~~locating, copying, and preparing~~] the information for delivery or inspection;[~~.~~]

(C) 20% overhead charge, calculated by multiplying the total personnel cost under subparagraph (B) by 0.20.

[~~(3) Not readily available information. For standard-size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas Government Code, §552.261, and regardless of number of pages, a charge of $15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may be added to the charges specified by this subsection as per 1 TAC §70.3 (relating to Charges for Providing Copies of Public Information).~~]

(3) [~~(4)~~] Certification. If certification of copies as true and accurate from the OCCC's records, or a certified statement verifying information on record with the OCCC is requested, an additional charge of $5 per certification will be added to the computed fee. The certification will include [~~A certified copy will bear~~] the signature of the commissioner, or a designated custodian of records for the information being certified, and the OCCC seal.

(4) [~~(5)~~] Nonstandard [~~Non-standard-size~~] copies. The cost for nonstandard [~~non-standard-size~~] copies will be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

(5) [~~(6)~~] Cost estimates.

(A) Over $40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over $100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $100, the agency will send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When public information is [~~copies are~~] required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When a requestor asks and the agency agrees to provide public information [~~copies are required to be sent~~] by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly. The agency is not required to provide expedited delivery without payment for the service.

[~~(3) Email. When copies of more than 50 pages are sent via email, the $0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.~~]

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees will be provided.

(2) Redaction of confidential information from paper records [~~and more than 50 pages~~]. If confidential information must be redacted prior to a requestor's inspection of paper records [~~and the request totals more than 50 pages~~], $0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Inspection of electronic information. Labor charges may be assessed if production of the information requires programming or manipulation of data (including redaction). Overhead is not charged.

(4) Over $40. If a request for inspection would result in charges under Texas Government Code, §552.271 that exceed $40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(5) [~~(3)~~] Over $100. If a request for inspection would result in charges of over $100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7 (relating to Estimates and Waivers of Public Information Charges).

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

§82.3. Request for Criminal History Evaluation Letter.

(a) Definitions. The following terms, when used in this section, have the following meanings:

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(3) Principal party--An individual who would qualify as a principal party as provided by the relevant chapter of this title under which a business entity is considering applying for a license or registration.

(b) [~~(a)~~] Purpose [~~and definitions~~]. The purpose of this section is to provide the procedures for a potential applicant [~~a person considering applying for a license from the Office of Consumer Credit Commissioner~~] to request a criminal history evaluation letter from the OCCC [~~regarding the person's eligibility for a license~~] under Texas Occupations Code, Chapter 53, Subchapter D. [~~This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges).~~]

(c) Applicability.

(1) This section applies to an individual who:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information;

(B) is enrolled or planning to enroll in an educational program that prepares the individual for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(C) has reason to believe that the individual is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense, as provided by Texas Occupations Code, §53.102(a)(2).

(2) This section applies to a business entity that:

(A) is considering applying for a license or registration for which the OCCC may obtain criminal history record information; and

(B) has at least one principal party who:

(i) is enrolled or planning to enroll in an educational program that prepares the principal party for a license or registration, or is planning to take an examination for a license or registration, as provided by Texas Occupations Code, §53.102(a)(1); and

(ii) has reason to believe that the business entity is ineligible for the license or registration due to a conviction or deferred adjudication for a felony or misdemeanor offense of the principal party, as provided by Texas Occupations Code, §53.102(a)(2).

[~~(b) Applicability. This section applies to all persons, including business entities, considering applying for a license with the agency under Title 4 of the Texas Finance Code. This section also applies to any other licensed business, occupation, or profession requiring a criminal history evaluation assigned to the regulatory authority of the agency under other law.~~]

(d) [~~(c)~~] Required information. In order to request [~~A request for~~] a criminal history evaluation letter, a person must submit the request [~~must be submitted~~] in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. The [~~Appropriate fees must be filed with the request, and the~~] request must include the following:

(1) a description of any educational program that the requestor is enrolled in or planning to enroll in to prepare for the license or registration;

(2) a description of any examination that the requestor is planning to take for the license or registration;

(3) [~~(1)~~] all court documentation relevant to the requestor's criminal history, including:

(A) copies of all court indictments, judgments, and orders against the requestor; and

(B) an explanation of the circumstances and events of the criminal action that led to the arrest, conviction, or sentence;

(4) [~~(2)~~] the basis for the requestor's potential ineligibility for a license or registration; and

(5) [~~(3)~~] an explanation of [~~as to~~] why any potential ineligibility should be disregarded.

(e) [~~(d)~~] Business entities. A business entity [~~Business entities~~] must provide the information required by subsection (d) [~~(c) of this section~~] for the entity and for each principal party. [~~every individual who would qualify as a principal party if the entity were applying for a license. To determine qualifying principal parties, each business entity requesting a determination under this section should consult the definition of "principal party" located in the respective chapter of this title under which the entity is considering applying for a license.~~]

(f) [~~(e)~~] Processing fees. A requestor must pay a $75 processing fee to the OCCC for each individual or business entity that is considering applying for a license or registration. The requestor must pay the fee at the time the request is filed. In addition, for each individual potential applicant and each principal party, the requestor must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [~~The fees to process a request for a criminal history evaluation letter are $75 for each entity requestor plus $40 for fingerprint processing for each individual or principal party included in the criminal history evaluation letter request.~~]

(g) [~~(f)~~] Notice of agency determination. Upon completion of the agency's investigation, the agency will notify the requestor of the agency's determination within 90 days of the requestor satisfying all of the agency's requests for information to complete the criminal history evaluation letter request. The determination letter will include the agency's determination on each ground of potential ineligibility.

§82.4. Consumer Complaint Process.

(a) Purpose. The purpose of this section is to clarify the applicability of Texas Finance Code, §14.062, Consumer Information and Complaints.

(b) Definitions. The following terms, when used in this section, have the following meanings:

(1) OCCC--The Office of Consumer Credit Commissioner of the State of Texas [~~Generally. This section adopts the words and terms as defined in §82.2 of this title (relating to Public Information Requests; Charges)~~].

(2) Person filing the complaint--An [~~complaint. For purposes of Texas Finance Code, §14.062(b) and (c), "person filing the complaint" means an~~] individual who has sought or is seeking to obtain goods, services, or financing from a commercial entity. This definition applies for purposes of Texas Finance Code, §14.062(b) and (c).

(c) Copy of OCCC policies and procedures. As provided by Texas Finance Code, §14.062(b), the OCCC will provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the OCCC's policies and procedures relating to complaint investigation and resolution.

(d) [~~(c)~~] Copy [~~Notice~~] of [~~OCCC~~] policies and procedures not required. If [~~When~~] the OCCC receives a complaint from a source other than a person filing the complaint (e.g., another state agency), then [~~"person filing the complaint" as defined in subsection (b)(2) of this section,~~] the OCCC is not required to send the policies and procedures [~~relating to complaint and investigation and resolution~~] to the subject of the complaint or the source of the complaint.

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 April 15, 2016.

TRD-201601763
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 936-7621

TITLE 10. COMMUNITY DEVELOPMENT

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

CHAPTER 182. BUSINESS ASSISTANCE

SUBCHAPTER B. LINKED DEPOSIT PROGRAM

10 TAC §§182.51 - 182.60

The Office of the Governor, Economic Development and Tourism Office (OOG) proposes the repeal of 10 TAC Chapter 182, Business Assistance, Subchapter B, Linked Deposit Program, §§182.51 - 182.60, concerning the Linked Deposit Program.

Explanation of Proposed Rules

The purpose of the proposed repeal is to implement statutory changes enacted by House Bill 2667, passed during the 84th Legislature, Regular Session. Title 10 TAC Chapter 182, Business Assistance, Subchapter B, Linked Deposit Program, §§182.51 - 182.60 are the administrative rules related to the Linked Deposit Program. House Bill 2667 repealed the statutory authority governing the Linked Deposit Program and consequently, the associated administrative rules have become obsolete regulation.

Fiscal Note

Mr. Bryan Daniel, Director of Economic Development and Tourism, Office of the Governor, has determined that, for each year of the first five years the repeal will be in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the repealed rules.

Public Benefit and Cost

Mr. Daniel has also determined that for each year of the first five years in which the proposed repeal is in effect, the public benefit anticipated as a result of the proposed repeal is to eliminate obsolete regulation. There are no anticipated economic costs for persons required to comply with the proposed repeal. There

will be no adverse economic effect on small businesses or micro-businesses.

Submittal of Comments

Written comments on the proposed rules may be submitted to Mr. Terry Zrubek, Office of the Governor, Economic Development and Tourism Office, P.O. Box 12428, Austin, Texas 78711 or to terry.zrubek@gov.texas.gov with the subject line "Proposed Repeal." The deadline for receipt of comments is 5:00 p.m. CST on May 31, 2016. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the Office of the Governor no more than fifteen (15) calendar days after the notice of proposed rules have been published in the *Texas Register.*

Statutory Authority

The rules are proposed under Texas Government Code, §489.002, which authorizes the Office of the Governor to adopt necessary rules.

Cross Reference to Statute

The proposed repeal affects no other code, article, or statute.

§182.51. Linked Deposit Program General Provisions.
§182.52. Definition of Terms.
§182.53. Application Procedures for Eligible Borrower.
§182.54. Application Procedures for the Lender.
§182.55. Procedure for Review by the Office.
§182.56. Acceptance and Rejection Procedures.
§182.57. Designation as Distressed Community.
§182.58. Program Limitations.
§182.59. Severability.
§182.60. Communications with the Office.

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 April 15, 2016.

TRD-201601797
Diane Morris
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-1955

♦ ♦ ♦

CHAPTER 183. INVESTMENT POLICY

10 TAC §§183.1 - 183.10

The Office of the Governor, Economic Development and Tourism Office (OOG) proposes the repeal of 10 TAC Chapter 183, Investment Policy, §§183.1 - 183.10, concerning the Texas Small Business Development Industrial Corporation and TEXCAP Financing Corporation Program.

Explanation of Proposed Rules

The purpose of the proposed repeal is to implement statutory changes enacted by House Bill 2667, passed during the 84th Legislature, Regular Session. Title 10 TAC Chapter 183, Investment Policy, §§183.1 - 183.10 are the administrative rules related to the Texas Small Business Development Industrial Corporation Program and TEXCAP Financing Corporation. House Bill 2667 repealed the statutory authority governing the Texas Small Business Development Industrial Corporation Program and consequently, the associated administrative rules have become obsolete regulation.

Fiscal Note

Mr. Bryan Daniel, Director of Economic Development and Tourism, Office of the Governor, has determined that, for each year of the first five years the repeal will be in effect, there will be no fiscal impact on state or local governments as a result of enforcing or administering the repealed rules.

Public Benefit and Cost

Mr. Daniel has also determined that for each year of the first five years in which the proposed repeal is in effect, the public benefit anticipated as a result of the proposed repeal is to eliminate obsolete regulation. There are no anticipated economic costs for persons required to comply with the proposed repeal. There will be no adverse economic effect on small businesses or micro-businesses.

Submittal of Comments

Written comments on the proposed rules may be submitted to Mr. Terry Zrubek, Office of the Governor, Economic Development and Tourism Office, P.O. Box 12428, Austin, Texas 78711 or to terry.zrubek@gov.texas.gov with the subject line "Proposed Repeal." The deadline for receipt of comments is 5:00 p.m. CST on May 31, 2016. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the Office of the Governor no more than fifteen (15) calendar days after the notice of proposed rules have been published in the *Texas Register.*

Statutory Authority

The rules are proposed under Texas Government Code, §489.002, which authorizes the Office of the Governor to adopt necessary rules.

Cross Reference to Statute

The proposed repeal affects no other code, article, or statute.

§183.1. Texas Small Business Industrial Development Corporation and TEXCAP Board Authority.
§183.2. Policy.
§183.3. Scope.
§183.4. Prudence.
§183.5. Limitations, Objectives and Strategy.
§183.6. Delegation of Authority.
§183.7. Training.
§183.8. Authorized Dealers.
§183.9. Authorized Investments.
§183.10. Internal Controls and Responsible Parties.

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 April 15, 2016.

TRD-201601800
Diane Morris
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Office
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 463-1955

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.103 (Training Program), §402.200 (General Restrictions on the Conduct of Bingo), §402.203 (Unit Accounting), §402.205 (Unit Agreements), §402.210 (House Rules), §402.300 (Pull-Tab Bingo), §402.301 (Bingo Card/Paper), §402.303 (Pull-tab or Instant Bingo Dispensers), §402.324 (Card-Minding Systems--Approval of Card-Minding Systems), §402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements), §402.400 (General Licensing Provisions), §402.404 (License and Registry Fees), §402.407 (Unit Manager), §402.411 (License Renewal), §402.420 (Qualifications and Requirements for Conductor License), §402.424 (Amendment of a License by Telephone or Facsimile), §402.451 (Operating Capital), §402.500 (General Records Requirements), §402.504 (Debit Card Transactions), §402.506 (Disbursement Records Requirements), §402.511 (Required Inventory Records), §402.514 (Electronic Fund Transfers), §402.600 (Bingo Reports and Payments), §402.602 (Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest), §402.603 (Bond or Other Security), §402.703 (Audit Policy), §402.706 (Standard Administrative Penalty Guideline), §402.707 (Expedited Administrative Penalty Guideline), and §402.708 (Dispute Resolution).

The proposed rule amendments are a result of both the Commission's recent rule review conducted in accordance with Texas Government Code §2001.039, and several stakeholder meetings between Commission staff and various representatives of the bingo community. The Commission solicited from these representatives any proposed rule changes desired by the bingo community, and the proposed changes were discussed at length in the meetings. Many (but not all) of the bingo community's proposed changes are reflected in this rulemaking proposal, as are certain other changes identified in the rule review and/or desired by the Commission.

The proposed amendment to §402.103 removes an obsolete reference to the "Bingo Bulletin," which is no longer published.

The proposed amendments to §402.200 affect the general conduct of bingo. First, the proposed amendments would require bingo conductors to make available upon request the written procedure that addresses equipment malfunctions and improper calls or placements. Next, the proposed amendments clarify that bingo cards may never be reserved for a particular player. The proposed amendments would also permit bingo conductors to value bingo equipment awarded as bingo prizes at the price actually paid for the equipment, provided that the conductor maintains a receipt for the equipment. The proposed amendments would also allow a bingo conductor to designate more than one individual as the bingo operator. The proposed amendments would also require a conductor's bingo caller to announce prior to the start of a bingo game the pattern needed to win the game and the prize(s), unless the prize amount is based on sales or attendance, in which case the prize must be announced prior to the end of the game. Finally, the proposed amendments clarify that a bingo occasion is considered to have occurred on the date on which the occasion began. This clarification is needed for those occasions that begin on one date but end on another date.

The proposed amendments to §402.203 remove obsolete references to a specific form and the payment of the gross rentals tax, which was abolished in the 84th Regular Legislative Session.

The proposed amendments to §402.205 clarify that a bingo bookkeeper may only be a business contact for a commercial lessor and a designated agent for an accounting unit if the bookkeeper is not an employee of the commercial lessor. This was the intent of the Commission when it originally adopted this rule in 2008 (33 TexReg 9223). The proposed amendments also clarify that when an organization joins an accounting unit and transfers bingo equipment and supplies to that unit, the written inventory of that equipment and supplies must include all pull-tab tickets. Finally, the proposed amendments remove from the rule a reference to "disbursement to charity" and replace it with "charitable purpose disbursement," which is the proper phrase used throughout Chapter 402.

The proposed amendments to §402.210 add a requirement that a bingo conductor's house rules be posted at the bingo premises in a location that is easily accessible to all patrons. This new requirement is designed to increase player awareness.

The proposed amendments to §402.300 affect pull-tab bingo games. First, the proposed amendments clarify that instant pull-tab tickets may be sold over multiple bingo occasions, and a winning instant ticket may only be claimed during the bingo occasion(s) where tickets from the winning ticket's deal are sold. Regarding event pull-tab tickets, the proposed amendments clarify that the event which determines the ticket winner(s) must occur during the same bingo occasion at which the first event pull-tab ticket from the deal was sold. Furthermore, a winning event pull-tab ticket may only be claimed during the bingo occasion at which the event occurred. However, the proposed amendments include exceptions that would permit licensed authorized organizations that are unit members, and organizations that conduct bingo on consecutive occasions within one 24-hour period, to hold an event and pay a winning ticket at certain other bingo occasions. The proposed amendments will still require certain information, including ticket price and game name, to be printed on a pull-tab ticket, but the amendments abolish the requirement that the information be printed on a specific side of the ticket. The proposed amendments also provide a consistent basis by which to determine the value of merchandise prizes. The proposed amendments also remove the absolute prohibition on pull-tab tickets displaying images of alcoholic beverages and weapons, but the amendments add a prohibition on the display of violent acts and offensive images or text. The proposed amendments will also allow the Commission to determine how many pull-tab tickets a manufacturer must submit for testing, which codifies current practice. The proposed amendments will also require manufacturers to include with a pull-tab ticket deal instructions on at least one permissible method to play the game. The proposed amendments also alter the distance required between numbers/symbols and the window perforations on a pull-tab ticket. Finally, the proposed amendments clarify the definitions of instant and event pull-tab tickets and will no longer require bingo conductors to include distributor information in their pull-tab ticket purchase log.

The proposed amendments to §402.301 remove the absolute prohibition on bingo cards and paper displaying images of alcoholic beverages and weapons, but the amendments add a prohibition on the display of offensive images or text. The proposed amendments also remove an obsolete citation to an old rule and replace it with the current citation.

The proposed amendments to §402.303 remove the requirement that when pull-tab bingo tickets are sold from a dispenser, the entire deal or package of pull-tab bingo tickets must be offered for sale. The intent of this amendment is to allow for more types of pull-tab bingo tickets to be stocked in a dispenser. The proposed amendments also delete an obsolete reference to the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling, which no longer exists. Finally, the proposed amendments also remove the requirement that manufacturers, distributors, and conductors maintain logs related to pull-tab bingo ticket dispensers.

The proposed amendments to §402.324 remove both the requirement that a manufacturer notify the Commission in writing before submitting a card-minding system to an independent testing facility for review and the requirement that the independent testing facility communicate with the manufacturer and/or Commission if any testing questions arise. While the proposed amendments remove the requirement that the independent testing facility communicate any testing questions to the Commission, we anticipate that such communications will still occur in some instances. The proposed amendments also require the Commission to notify both the manufacturer and the independent testing facility whether the Commission has approved or disapproved a specific card-minding system.

The proposed amendments to §402.325 will no longer require a player seeking a refund from a voided transaction to provide his or her address and telephone number. This change is proposed in the interest of privacy. The proposed amendments will also remove the prohibition on reserving card-minding devices for players.

The proposed amendments to §402.400 remove obsolete references to a specific schedule and replace it with the proper form name.

The proposed amendments to §402.404 remove obsolete language regarding bingo licenses issued before, and bingo worker registry applications submitted on or after, September 1, 2013. The proposed amendments also limit when a bingo worker registry renewal application may be submitted. Currently, the Commission will not accept renewal applications received more than 90 days before the current license expiration date. The proposed amendments lower that threshold to 60 days before the current license expiration date. This change brings the rule in line with the bingo operating service system requirements.

The proposed amendments to §402.407 delete the formula used to determine the bond amounts for unit managers. The new formula will be located in §402.603.

The proposed amendments to §402.411 limit when a license renewal application may be submitted. Currently, the Commission will not accept renewal applications received more than 90 days before the current license expiration date. The proposed amendments lower that threshold to 60 days before the current license expiration date. This change brings the rule in line with the bingo operating service system requirements.

The proposed amendments to §402.420 only alter the attached figure. The amendments remove obsolete references to form names and replace them with the proper names. The proposed amendments also correct a spelling error.

The proposed amendments to §402.424 would allow a license amendment request application to be submitted via electronic mail, telephone or facsimile.

The proposed amendments to §402.451 remove obsolete language and the attached figure regarding the disbursement of any bingo account balance in excess of the bingo conductor's or accounting unit's operating capital limit. The deleted language only covered such disbursements through September 30, 2012.

The proposed amendments to §402.500 clarify that any bingo licensee must provide to the Commission upon request any information required to be maintained by the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

The proposed amendments to §402.504 will only require a bingo conductor to provide a debit card transaction sales receipt to the purchaser upon request. The proposed amendments will also clarify that bingo conductors must maintain either an electronic or hard copy of all debit card transaction sales receipts.

The proposed amendments to §402.506 clarify that the types of records listed in subsection (b) of the rule are only examples of the types of records that are acceptable to substantiate bingo expenses. Records not listed in subsection (b) may still be acceptable, provided that the records adequately document and substantiate such an expense, as determined by the Commission. The proposed amendments also remove the requirement that a bingo conductor's Cash Disbursements Journal include the conductor's or unit's name, taxpayer or unit number, and the calendar quarter.

The proposed amendments to §402.511 add a requirement that a bingo conductor's perpetual inventory of pull-tab bingo tickets contain the occasion date(s) that the pull-tab tickets were sold.

The proposed amendments to §402.514, which governs electronic fund transfers, would permit the bingo chairperson of a bingo conductor that is part of an accounting unit to designate another individual to review the accounting records and bank statements with the conductor's bookkeeper.

The proposed amendments to §402.600 remove obsolete references to the payment of gross rental taxes. The proposed amendments also clarify that all quarterly report supplements must be submitted to the Commission in accordance with the same requirements for the report itself. The proposed amendments would also require commercial lessors to include in their quarterly reports information regarding property taxes paid by the lessor and reimbursed by the lessee bingo conductor. Finally, the proposed amendments would require quarterly report monetary amount entries to be rounded to whole dollar amounts.

The proposed amendments to §402.602 will require the Commission to notify inactive accounts that a prize fee or rental tax is owed, and provide the accounts with existing documents that support the delinquency determination. Such notification may be provided to any officer, director, or business contact listed in the inactive account's most recent filing with the Commission.

The proposed amendments to §402.603 alter and clarify the bond and security requirements for bingo conductors, commercial lessors, manufacturers, accounting units, and unit managers. The bond requirement for commercial lessors to

secure payment of the gross rentals tax was abolished in the 84th Regular Legislative Session, therefore the proposed amendments remove all references to commercial lessors' bond requirements. The proposed amendments also clarify that bingo conductors must maintain a bond or other security until their license is relinquished or revoked, which is required under §2001.514 of the Occupations Code. The regular bond amount requirements for bingo conductors have not been changed, but if a conductor fully pays all prize fees and penalties, if any, for eight consecutive quarters, their bond amount will be reduced to $100.00. The proposed amendments also alter the bond requirement for unit managers. Under the proposed amendments, a unit manager must submit a bond in the amount equal to the aggregate of the bond amounts for each of the unit's member organizations. The Commission anticipates that this change will result in lower unit manager bond amounts than those calculated under the previous formula, found in §402.407. Finally, the proposed amendments permit accounting units without a unit manager to submit one bond to cover each of the unit's member organizations.

The proposed amendments to §402.703, which governs Commission audits of licensees, will require that the audit fieldwork take place at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office. The purpose of this proposed amendment is to have the audit fieldwork take place at the location where the licensee's business records are located; thereby not requiring licensees to transport their records (which are usually voluminous) to another location.

The proposed amendments to §402.706 implement §2001.358 of the Occupations Code, which requires the Commission to adopt a schedule of sanctions that defines and summarizes statutory and rule violations to ensure that sanctions imposed are appropriate to the violation. The schedule must include a list of the most common violations and the sanctions assessed for those violations, including license suspension and revocation. The Commission's previous schedule only addressed the imposition of administrative penalties. The proposed amendments add to the schedule those violations that could result in license suspension, revocation or denial, or bingo worker registry removal or denial.

The proposed amendments to §402.707 add language to the rule's Expedited Administrative Penalty Chart to incorporate §2001.420(b)(2) of the Occupations Code, which states that bingo games that award individual prizes of $50 or less are not included in the $2,500 prize limit for a single bingo occasion. The proposed amendments also remove an obsolete reference to the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling, which no longer exists. Finally, the proposed amendments allow for an informal dispute resolution conference to occur after a licensee or other person receives a Notice of Administrative Violation and Settlement Agreement

The proposed amendments to §402.708 correct a spelling error and remove obsolete references to the Request for Informal Dispute Resolution Form, which does not exist. The proposed amendments also clarify that if a licensee does not attend a scheduled Dispute Resolution Conference, a formal hearing *may* occur. Finally, the proposed amendments will allow for an informal dispute resolution conference for disputes regarding a Notice of Administrative Violation and Settlement Agreement, an audit finding(s) contained within a final audit report, a determination letter or a notice of opportunity to show compliance letter.

Kathy Pyka, Controller, has determined that the proposed rule amendment to remove the remittance of the gross rental tax by licensed commercial lessors aligns the agency rule with statute. Ms. Pyka has also determined that for each year of the first five years that all the proposed amendments will be in effect, there will be no significant fiscal impact for the state as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Government Code §2006.001(2).

Alfonso D. Royal, III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed amended rules will be in effect, the anticipated public benefits are the more efficient and equitable regulation of charitable bingo, increased compliance with the Bingo Enabling Act and Commission rules, and a reduced regulatory burden on the bingo industry.

The Commission requests comments on the proposed amended rules from any interested person. Comments may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in order to be considered. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, May 11, 2016, at 611 E. 6th Street, Austin, Texas 78701.

SUBCHAPTER A. ADMINISTRATION

16 TAC §402.103

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.103. Training Program.

(a) - (e) (No change.)

(f) On-site training course.

(1) Notice of the specified date, time and location of scheduled on-site training courses will be posted on the Commission's website [~~and published in the Bingo Bulletin~~].

(2) - (7) (No change.)

(g) (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 April 18, 2016.

TRD-201601830

Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

♦ ♦ ♦

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §§402.200, 402.203, 402.205, 402.210

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.200. General Restrictions on the Conduct of Bingo.

(a) (No change.)

(b) Inspection and use of equipment.

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

(6) The organization must establish and adhere to, and make available to the players upon request, a written procedure that addresses problems during a bingo occasion concerning:

(A) - (B) (No change.)

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

(e) Pull-tab bingo event tickets may not be sold after the occurrence of the event used to determine the game's winner(s) unless the organization has a policy and procedure in their house rules addressing the sale and redemption of pull-tab bingo event tickets after the event has taken place.

(f) Merchandise prizes. Any merchandise or other non-cash prize, including bingo equipment, awarded as a bingo prize shall be valued at its current retail price. However, [~~with the exception of bingo equipment,~~] a non-cash prize awarded as a bingo prize may be valued at the price actually paid for that prize provided that the licensed authorized organization maintains a receipt or other documentation evidencing the actual price paid. Prize fees must be collected on merchandise and non-cash prizes.

(g) (No change.)

(h) The licensed authorized organization is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

(1) - (2) (No change.)

(3) Each licensed authorized organization shall conspicuously display during all bingo occasions a sign indicating the name(s) [~~name~~] of the operator(s) authorized by the licensed authorized organization to be [~~operator~~] in charge of the occasion.

(A) (No change.)

(B) The sign shall inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to an [~~the~~] operator listed on the sign.

(C) (No change.)

(4) - (5) (No change.)

(i) Reservation of bingo cards. No [~~Except where otherwise expressly permitted by this chapter, no~~] licensed authorized organization may reserve, or allow to be reserved, any bingo card or cards for use by a bingo player.

(j) (No change.)

(k) Caller requirements. The caller shall:

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

(4) announce:

(A) prior to the start of the regular bingo game, the pattern needed to win and the prize. If [~~the amount of the prize prior to the end of the game if~~] the prize amount is based on sales or attendance, the prize amount must be announced prior to the end of the game;

(B) - (D) (No change.)

(5) - (6) (No change.)

(l) - (n) (No change.)

(o) For purposes of §2001.419 of the Occupations Code, a bingo occasion will be considered to have occurred on the date on which the occasion began.

§402.203. Unit Accounting.

(a) - (g) (No change.)

(h) Unit Recordkeeping.

(1) Each unit must file a quarterly report and any required supplements [~~Schedule B~~] on forms prescribed by the Commission and maintain records to substantiate the contents of the reports.

(2) (No change.)

(3) A member of a unit which is also licensed as a commercial lessor must report its rental income on the unit quarterly report [~~and remit the taxes on rental income~~].

(4) (No change.)

(i) Unit Bingo Account.

(1) - (4) (No change.)

(5) All [~~taxes on rental income and all~~] prize fees must be paid from the unit bingo account.

(j) - (l) (No change.)

§402.205. Unit Agreements.

(a) - (e) (No change.)

(f) A unit may appoint a designated agent who must be a natural person.

(1) (No change.)

(2) A bookkeeper may be a business contact for a commercial lessor and a designated agent for an accounting unit provided that the bookkeeper is not an employee of [~~employed by~~] the commercial lessor.

(g) The original unit or trust agreement must contain the following information:

(1) - (6) (No change.)

(7) the method by which net proceeds and charitable purpose disbursements [~~to charity~~] will be apportioned among the members;

(8) - (10) (No change.)

(h) (No change.)

(i) A written inventory of bingo equipment and supplies must include the following:
Figure: 16 TAC §402.205(i)

(j) - (m) (No change.)

§402.210. House Rules.

(a) - (d) (No change.)

(e) The house rules must be posted at a location within the bingo premises that is easily accessible to all patrons and made available to anyone upon request.

(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 April 18, 2016.

TRD-201601831
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

♦ ♦ ♦

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §§402.300, 402.301, 402.303, 402.324, 402.325

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.300. Pull-Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Face--The side [~~front~~] of a pull-tab bingo ticket, which displays the artwork of a specific game. [~~The front of the pull-tab bingo ticket includes, but is not limited to, the name of the game, the price of the game and the payout structure of the game.~~]

(4) - (5) (No change.)

(6) High Tier--The two highest paying prize amounts as designated on [~~the face of~~] the pull-tab bingo ticket and on the game's flare.

(7) (No change.)

(8) Merchandise--Any non-cash item(s), including bingo equipment, provided to a licensed authorized organization that is used as a prize.

(9) - (11) (No change.)

(12) Payout Structure--The printed information that appears on [~~the face of~~] a pull-tab bingo ticket that[~~. This display~~] shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(13) (No change.)

(14) Prize Amount--The value of cash and/or [~~the fair market value of~~] merchandise which is awarded as a prize, as valued under §402.200(f) of this chapter. A collectable item is considered merchandise for determining allowable prize amounts. [~~If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization.~~]

[~~(15) Reverse--The back of a pull-tab bingo ticket that has a perforated break-open tab(s) that when opened reveals one or more numbers and/or symbols that appear under the tab(s).~~]

(15) [~~(16)~~] Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.]

(16) [~~(17)~~] Subset--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(17) [~~(18)~~] Symbol--A graphic representation of an object other than a numeric or alpha character.

(18) [~~(19)~~] Video Confirmation--A graphic and dynamic representation of the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket.

(b) Approval of pull-tab bingo tickets.

(1) (No change.)

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show both [~~the face and reverse~~] sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) (No change.)

(B) contain the name of the game in a conspicuous location on [~~the face of~~] the pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on [~~the face of~~] the pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on [~~the face of~~] the pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on [~~the face of~~] the pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on [~~the face of~~] the pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting violent acts, [~~alcoholic beverages, weapons,~~] profane language, or provocative, explicit, offensive or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets [~~reverse side~~] along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit a specified number of tickets [~~one deal,~~] for testing. The tickets [~~deal~~] must be submitted for testing to the Commission at the manufacturers own expense. If necessary, the Commission may request that additional tickets or a deal [~~deals~~] be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo tickets [~~deal(s)~~] pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) (No change.)

(c) Disapproval of pull-tab bingo tickets.

(1) (No change.)

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted tickets have [~~deal has~~] passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) (No change.)

(d) Manufacturing requirements.

(1) - (12) (No change.)

(13) Pull-tab bingo tickets must:

(A) - (C) (No change.)

(D) be designed so that the numbers and symbols are a minimum of [~~2.5/32 (5/64) inch from the dye-cut window perforations, except for a five window tab which may be~~] 2/32 (4/64) inch from the dye-cut window perforations;

(E) - (F) (No change.)

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations; [~~and~~]

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer; and[~~.~~]

(I) be designed so that the name of the manufacturer or its distinctive logo, form number and serial number unique to the deal, name of the game, price of the ticket, and the payout structure remain when the letters, numbers, and symbols are revealed.

(14) (No change.)

(15) A manufacturer must include with each pull-tab bingo ticket deal instructions for how the pull-tab bingo ticket can be played in a manner consistent with the Bingo Enabling Act and this chapter. The instructions are not required to cover every potential method of playing the pull-tab bingo ticket deal.

(e) Sales and redemption.

(1) Instant pull-tab bingo tickets from a single deal may be sold by a licensed authorized organization over multiple occasions. A [~~All~~] winning instant pull-tab bingo ticket [~~tickets~~] must be presented for payment during the licensed authorized organization's bingo occasion(s) [~~licensed times~~] at which the instant pull-tab bingo ticket is available for sale. [~~Immediately upon payment a licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface each winning pull-tab bingo ticket of $25.00 or more.~~]

(2) Except as provided by paragraph (3) or (4) of this subsection, the event used to determine the winner(s) of an event pull-tab bingo ticket deal must occur during the same bingo occasion at which the first event pull-tab bingo ticket from that deal was sold. A winning event pull-tab ticket must be presented for payment during the same bingo occasion at which the event occurred. [~~a licensed authorized organization may sell or redeem pull-tab bingo tickets on the premises specified in its bingo license only:~~]

[~~(A) during the licensed authorized organization's licensed times; or~~]

[~~(B) during a required intermission between the bingo occasions of two licensed authorized organizations.~~]

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem event pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time on consecutive occasions within one 24-hour period [~~until the deal is withdrawn under paragraph (6) of this subsection~~].

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, the organization may sell or redeem event pull-tab tickets from a deal during either occasion [~~and during an intermission between the two bingo occasions~~].

(5) (No change.)

(6) A licensed authorized organization may not withdraw a deal of instant pull-tab bingo tickets from play until the entire deal is completely sold out or all winning instant pull-tab bingo tickets of $25.00 prize winnings or more have been redeemed, or the bingo occasion ends.

(7) - (10) (No change.)

(11) A licensed authorized organization must sell the pull-tab ticket for the price printed on the pull-tab ticket.

(12) Immediately upon payment of a winning pull-tab ticket of $25.00 or more, the licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface that winning pull-tab bingo ticket.

(f) (No change.)

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets.[~~:~~]

[~~(A) the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets; and~~]

[~~(B) the name, address, and taxpayer number of the distributor from whom the pull-tab bingo tickets were purchased.~~]

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion [~~daily~~] cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register or point of sale station.

(3) - (5) (No change.)

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale, return, or any type of transfer of pull-tab bingo tickets:

(A) - (C) (No change.)

(D) form number and serial number of each pull-tab bingo game's deal;

(E) - (F) (No change.)

(7) (No change.)

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

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

(6) Event Ticket. A form of pull-tab bingo that utilizes [~~Pull-tab bingo tickets used as event tickets must contain more than two instant winners. Event ticket winner(s) are determined by~~] some subsequent action to determine the event ticket winner(s), such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols. When a flare is used to determine winning tickets, the flare shall have the same form number and serial number as the event tickets. Pull-tab bingo tickets used as event tickets must contain more than two instant winners.

(7) Instant Ticket. A form of pull-tab bingo that has [~~have~~] pre-determined winners and losers and has [~~have~~] immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. A pull-tab bingo [~~An event~~] ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, form number, serial number, and winner verification.

(9) - (10) (No change.)

§402.301. Bingo Card/Paper.

(a) (No change.)

(b) Approval of bingo card/paper.

(1) - (2) (No change.)

(3) The bingo card/paper may contain numbers or symbols so long as the numbers or symbols preserve the integrity of the Commission. The Commission will not approve any bingo paper that displays images or text that could be interpreted as depicting [~~alcoholic beverages,~~] violent acts, [~~weapons,~~] profane language, or provocative, explicit, offensive or derogatory images or text, as determined by the Commission. All images or text are subject to final approval by the Commission.

(4) - (6) (No change.)

(c) - (k) (No change.)

(l) Card-minding devices. This rule shall be applicable only to bingo card/paper made of paper, cardboard or similar material approved by the Commission and shall not be applicable to the manufacture or use of card-minding devices addressed in §§402.321 - 402.328 of this chapter [~~§402.302~~], with the exception of style of play as defined by this rule and approved by the Commission.

§402.303. Pull-tab or Instant Bingo Dispensers.

(a) (No change.)

(b) Manufacturing requirements.

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

[~~(6) The toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling must be displayed on each pull-tab or instant bingo dispenser in such a manner that it is conspicuous and clearly visible to a player using the device.~~]

(c) Conductor requirements.

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

(4) [~~The entire deal or package shall be offered for sale, except as otherwise provided by §402.300(d)(5) of this chapter.~~] All break-open bingo tickets, instant bingo tickets, pull-tab bingo games or instant bingo cards in any one column or sleeve must have the same serial number, color description, and must be of the same kind and type.

(d) (No change.)

(e) Records.

[~~(1) Each manufacturer selling pull-tab or instant bingo dispensers must maintain a log showing the date, model, and serial number of the purchased dispenser and to whom the dispenser was sold.~~]

[~~(2) Each distributor selling, leasing, or otherwise furnishing pull-tab or instant bingo dispensers must maintain a log showing the following information:~~]

[~~(A) the date, model and serial number of the dispenser;~~]

[~~(B) the name and Texas taxpayer identification number of the licensed organization to whom the pull-tab or instant bingo dispenser was furnished;~~]

[~~(C) name, address, and Texas taxpayer identification number of the manufacturer or distributor from whom the dispenser was purchased; and~~]

[~~(D) name, address, and Texas taxpayer identification number of the distributor to whom the dispenser was sold, leased, or otherwise furnished.~~]

[~~(3) Each conductor purchasing, leasing, or otherwise utilizing pull-tab or instant bingo dispensers must maintain a log showing the date, model, and serial number of the dispenser and the name, address, and Texas taxpayer identification number of the distributor from whom the dispenser was purchased, leased, or otherwise furnished. If multiple conductors hold an interest in a dispenser, each must maintain a separate record.~~]

(1) [~~(4)~~] All records, reports, and receipts relating to the pull-tab or instant bingo dispenser sales, maintenance, and repairs must be retained by the conductor on the premises where the conductor is licensed to conduct bingo or at a location designated in writing by the conductor for a period of four years for examination by the Commission. Any change in the designated location must be submitted to the Commission in writing at least ten days prior to the change.

(2) [~~(5)~~] Manufacturers and distributors must provide and maintain for a period of four years the following information on each invoice or other document used in connection with a sale or lease, as applicable:

(A) date of sale or lease;

(B) quantity sold or leased;

(C) cost per dispenser;

(D) model and serial number of each dispenser;

(E) name and address of the purchaser or lessee; and

(F) Texas taxpayer identification number of the purchaser or lessee.

(f) (No change.)

§402.324. Card-Minding Systems--Approval of Card-Minding Systems.

(a) (No change.)

(b) Utilizing an Independent Testing Facility:

[~~(1) Manufacturer has card-minding system ready for submission, and informs the Commission in writing prior to the submission;~~]

(1) [~~(2)~~] Manufacturer submits system to lab with letter outlining the card-minding system to be tested for approval in Texas;

(2) [~~(3)~~] Lab performs validation testing to ensure compliance with the Commission's requirements. Testing may include functional testing and/or modification testing, if applicable;

[~~(4) Lab communicates with manufacturer and/or Commission on any questions arising from testing;~~]

(3) [~~(5)~~] Lab creates certification report which includes file verification methodology, software/firmware signatures (checksum) and testing results;

(4) [~~(6)~~] Manufacturer submits approval request with certification report to the Commission;

(5) [~~(7)~~] Once the Commission has received the certification report from the independent testing facility, the Commission may request a demonstration of the product; and

(6) [~~(8)~~] The Commission shall either approve or disapprove the submission based on the test results and inform the manufacturer and lab of the results within thirty (30) calendar days of receipt of the test results.

(c) - (i) (No change.)

§402.325. Card-Minding Systems--Licensed Authorized Organization Requirements.

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

(d) The licensed authorized organization must treat void transactions resulting in a cash refund in the following manner:

(1) - (2) (No change.)

(3) The player must write his or her name, [~~address, telephone number,~~] signature, and amount of refund on the back of the void receipt before a partial or full refund may be issued; and

(4) (No change.)

(e) - (j) (No change.)

[~~(k) Card-minding devices may not be reserved for players. Each player shall have an equal opportunity to use the available devices on a first come, first served basis.~~]

(k) [~~(l)~~] After the last game of the bingo occasion has been completed, the licensed authorized organization shall print an occasion report from the site system.

(l) [~~(m)~~] The bingo player must be physically present during the game on the premises where the game is actually conducted.

(m) [~~(n)~~] A licensed authorized organization may not add to or remove any software program related to the conduct of bingo to an approved card-minding system. If the Commission detects or discovers a card-minding system at a bingo premises that is using components or software that were not approved by the Commission as required, the card-minding system is deemed to have an unauthorized modification.

(n) [~~(o)~~] No licensed authorized organization may display, use, or otherwise furnish a card-minding device which has in any manner been tampered with, or which otherwise may deceive the player or affect a player's chances of winning.

(o) [~~(p)~~] At the time a player establishes a customer account, the licensed authorized organization must notify the player that any unclaimed balances in the customer account at the end of the occasion will be retained by the organization. Information regarding the retention by the licensed authorized organization of the unclaimed balances in a customer account at the end of an occasion must be included in the information the organization must provide to its players pursuant to §402.200 of this chapter. Any unclaimed balances retained by the organization under this subsection shall be considered to be funds derived from the conduct of bingo, deposited into the organization's bingo account, and reported as other income. However, any unclaimed balances deposited into the organization's bingo account are restricted to the organization's charitable purposes, as provided by Texas Occupations Code §2001.453(2) and §2001.454.

(1) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code Chapter 2001, Subchapter I-1, any balances on a customer account may be used by the customer for any bingo occasion conducted on the same day of any of the organizations in the unit on the premises specified in their bingo licenses.

(2) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, any balances on a customer account may be used by the customer during either occasion.

(p) [~~(q)~~] A licensed authorized organization must comply with the requirements in §402.200(b)(6) of this chapter regarding all bingo equipment malfunctions, including customer accounts on a card-minding system.

(q) [~~(r)~~] Each licensed authorized organization must ensure that the card-minding system records the actual selling price of each card-minding device and electronic bingo card sold.

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 April 18, 2016.

TRD-201601832
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

♦ ♦ ♦

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §§402.400, 402.404, 402.407, 402.411, 402.420, 402.424, 402.451

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.400. General Licensing Provisions.

(a) - (l) (No change.)

(m) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee's authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed [~~form "Schedule E~~] Authorization of Representation for Bingo Licenses form.[~~"~~] A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the [~~"Schedule E~~] Authorization of Representation for Bingo Licenses form[~~"~~] that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the [~~"Schedule E~~] Authorization of Representation for Bingo Licenses form[~~"~~] as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

(n) Eligibility determination pending identification of playing location, days, times, and starting date.

(1) (No change.)

(2) All other information requested on the application and the accompanying supplements [~~schedules~~] must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) - (7) (No change.)

§402.404. License and Registry Fees.

(a) Definitions.

(1) - (2) (No change.)

(3) Regular License Fee Amount:

[~~(A) License to Conduct Bingo:~~]

[~~*(i)* The annual fee for a license to conduct bingo that becomes effective before September 1, 2013, shall be an amount equal to the minimum license fee amounts based on annual gross receipts specified in Texas Occupations Code, §2001.104(a).~~]

(A) [~~(ii)~~] The annual fee for a license to conduct bingo [~~that becomes effective on or after September 1, 2013,~~] shall be as follows:

(i) [~~(I)~~] Class A (annual gross receipts of $25,000 or less) - $132;

(ii) [~~(II)~~] Class B (annual gross receipts of more than $25,000 but not more than $50,000) - $264;

(iii) [~~(III)~~] Class C (annual gross receipts of more than $50,000 but not more than $75,000) - $396;

(iv) [~~(IV)~~] Class D (annual gross receipts of more than $75,000 but not more than $100,000) - $528;

(v) [~~(V)~~] Class E (annual gross receipts of more than $100,000 but not more than $150,000) - $792;

(vi) [~~(VI)~~] Class F (annual gross receipts of more than $150,000 but not more than $200,000) - $1,188;

(vii) [~~(VII)~~] Class G (annual gross receipts of more than $200,000 but not more than $250,000) - $1,584;

(viii) [~~(VIII)~~] Class H (annual gross receipts of more than $250,000 but not more than $300,000) - $1,980;

(ix) [~~(IX)~~] Class I (annual gross receipts of more than $300,000 but not more than $400,000) - $2,640;

(x) [~~(X)~~] Class J (annual gross receipts of more than $400,000) - $3,300.

[~~(B) Commercial Lessor License:~~]

[~~*(i)* The annual fee for a commercial lessor license that becomes effective before September 1, 2013, shall be an amount equal to the minimum license fee amounts based on annual gross rentals specified in Texas Occupations Code, §2001.158(a).~~]

(B) [~~(ii)~~] The annual fee for a commercial lessor license [~~that becomes effective on or after September 1, 2013~~] shall be as follows:

(i) [~~(I)~~] Class A (annual gross rentals from licensed organizations of not more than $12,000) - $132;

(ii) [~~(II)~~] Class B (annual gross rentals from licensed organizations of more than $12,000 but not more than $20,000) - $264;

(iii) [~~(III)~~] Class C (annual gross rentals from licensed organizations of more than $20,000 but not more than $30,000) - $396;

(iv) [~~(IV)~~] Class D (annual gross rentals from licensed organizations of more than $30,000 but not more than $40,000) - $528;

(v) [~~(V)~~] Class E (annual gross rentals from licensed organizations of more than $40,000 but not more than $50,000) - $792;

(vi) [~~(VI)~~] Class F (annual gross rentals from licensed organizations of more than $50,000 but not more than $60,000) - $1,188;

(vii) [~~(VII)~~] Class G (annual gross rentals from licensed organizations of more than $60,000 but not more than $70,000) - $1,584;

(viii) [~~(VIII)~~] Class H (annual gross rentals from licensed organizations of more than $70,000 but not more than $80,000) - $1,980;

(ix) [~~(IX)~~] Class I (annual gross rentals from licensed organizations of more than $80,000 but not more than $90,000) - $2,640;

(x) [~~(X)~~] Class J (annual gross rentals from licensed organizations of more than $90,000) - $3,300.

(C) - (D) (No change.)

(b) - (d) (No change.)

(e) Two-Year License Fee Payments.

[~~(1)~~] An applicant for a license issued under the Bingo Enabling Act that is effective for two years must pay an amount equal to two times the amount of the annual license fee, as set in §402.404(a)(3).

[~~(2) Two-Year License to Conduct Bingo or to Lease Bingo Premises Issued Before September 1, 2013:~~]

[~~(A) To be timely received, the full license fee payment for the second year of a two year license must be postmarked no later than the first anniversary of the date the license became effective. A license fee payment bearing no legible postmark, postal meter date, or date of delivery to the common carrier may be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the check, if the check date is less than seven days earlier than date of receipt. If the first anniversary of the date the license became effective falls on a Saturday, Sunday, or legal holiday, the payment will be due the next day which is not a Saturday, Sunday, or legal holiday.~~]

[~~(B) An organization that places its license on administrative hold during the first year of a two year license period and elected to pay the second year by the first anniversary of the license effective date may pay a Class A license fee, plus any amount due under subsection (d)(2) of this section, for the second year of the license period.~~]

[~~(C) If the first anniversary of the date a two-year license became effective falls on or after September 1, 2013, the fee amount due for the second year of that license will be the amount set in §402.404(a)(3)(A)(ii) or §402.404(a)(3)(B)(ii).~~]

(f) - (k) (No change.)

(l) Registry of Approved Bingo Workers.

(1) A fee of $25 must accompany each Texas Application for Registry of Approved Bingo Workers, and each application to renew listing on the registry, submitted to the Commission [~~on or after September 1, 2013~~]. The Commission will not consider or act upon an application until the requisite fee is paid.

(2) Except as authorized by the Charitable Bingo Operations Director, or their designee, an application to renew listing on the registry received by the Commission more than 60 [~~90~~] days prior to the expiration date of the current registry listing will be returned unprocessed by the Commission to the sender.

§402.407. Unit Manager.

(a) Notification.

(1) An individual shall not provide services as a unit manager to licensed authorized organizations that have formed a unit until the following occurs:

(A) - (B) (No change.)

(C) the individual posts a bond or security, for each unit, as [~~in the form~~] prescribed by §402.603 [~~§402.603(b)~~] of this chapter; and

(D) (No change.)

[~~(2) Bond. The required initial bond amount for a unit manager shall not exceed $30,000.00 for each unit. The unit manager's required initial bond amount will be determined by identifying the license class of each member of the unit and adding the corresponding dollar amounts for each member as follows:~~]

[~~(A) Classes A - D $1000~~]

[~~(B) Classes E - H $3000~~]

[~~(C) Classes I - J $6000~~]

(2) [~~(3)~~] A unit manager shall provide written notification to the Commission of any change in the information in the unit manager's most recent application for a unit manager license or renewal. The unit manager shall notify the Commission of the change in the information not later than the 15th day after the date of the change.

(b) (No change.)

§402.411. License Renewal.

(a) - (l) (No change.)

(m) Except as authorized by the Charitable Bingo Operations Director, or their designee, license renewal applications received by the Commission more than 60 [~~90~~] days prior to the current license expiration date will be returned unprocessed by the Commission to the sender.

§402.420. Qualifications and Requirements for Conductor's License. An applicant must provide with its application documentation demonstrating that it meets all qualifications and requirements for a license to conduct bingo based on the type of organization it is. The qualifications, requirements, and necessary documentation for different types of organizations are shown in the chart below.

Figure: 16 TAC §402.420

§402.424. Amendment of a License by Electronic Mail, Telephone or Facsimile.

(a) [~~Definitions.~~] The term "effective date," [~~following words and terms,~~] when used in this section, shall mean the [~~have the following meanings, unless the context clearly indicates otherwise:~~]

[~~(1) Personal identification number (P.I.N.)--A five digit number uniquely assigned by the Commission to each licensed authorized organization for the purpose of validating a caller's authority to make changes by telephone to the day(s) or time(s) bingo is conducted by the organization.~~]

[~~(2)~~] [~~Effective date--The~~] first day that the changes to the day(s) or time(s) bingo is conducted by the organization are to begin.

(b) A licensed authorized organization may change the day(s) or time(s) it conducts bingo by electronic mail, telephone or facsimile

provided the organization has sufficient amendment license fee credit. The request should be received no later than noon the business day before the requested effective date of the amended license.

(1) To change by telephone the day(s) or time(s) the organization conducts bingo, an authorized [a] requestor must speak directly to a License and Permit Specialist in the Licensing Services Department of the Charitable Bingo Operations Division, who will verify the caller's authority to request an amendment. [an examiner in the licensing section of the Charitable Bingo Operations Division and supply the organization's P.I.N.]

[(A) Control of a P.I.N. is the responsibility of the organization. An organization is responsible for all bingo activities conducted under an approved license change when a valid P.I.N. is provided.]

[(B) To change an organization's P.I.N., the Commission must receive a written request from the organization's chief executive officer.]

(2) To change by [via] facsimile [request] the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete [completed] application at the facsimile number provided on the prescribed application form.

(3) To change by electronic mail the day(s) or time(s) the organization conducts bingo, the Commission must receive a complete application at the bingo service electronic mail address provided on the prescribed application form.

§402.451. Operating Capital.

(a) - (g) (No change.)

[(h) The bingo account balance as of October 1, 2009, in excess of a licensed authorized organization's or unit's retained operating capital limit as of January 1, 2010, must be disbursed within the following time frame:]
[Figure: 16 TAC §402.451(h)]

(h) [(i)] Recalculation of Operating Capital.

(1) A licensed authorized organization or unit that files an original or amended quarterly report for a period used to calculate its retained operating capital limit may submit a written request to the Commission to re-calculate the limit.

(2) A request to re-calculate a retained operating capital limit must include:

(A) the reason for the request identifying the specific quarter that the original or amended quarterly report was filed; and

(B) the signature of the bingo chairperson if the request is submitted by a licensed authorized organization, the unit manager if the unit is managed by a unit manager, or the designated agent if the unit is not managed by a unit manager.

(i) [(j)] A licensed authorized organization or unit may apply for an increase in its retained operating capital limit.

(j) [(k)] The failure of a licensed authorized organization or unit to receive notification from the Commission of its retained operating capital limit by the effective date does not relieve the organization or unit from complying with the retained operating capital limit.

(k) [(l)] All net proceeds in excess of the retained operating capital limit must be disbursed in accordance with the Act and Rules.

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 April 18, 2016.

TRD-201601833
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §§402.500, 402.504, 402.506, 402.511, 402.514

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.500. General Records Requirements.

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

(c) Upon request of the Commission, a licensee shall provide [make available] any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available.

§402.504. Debit Card Transactions.

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

(c) Records.

(1) Upon request, a [A] debit card transaction sales receipt must be provided to the purchaser that uses a debit card to buy or use bingo paper/cards, electronic bingo devices or pull tabs. An electronic or hard [A] copy of the debit card transaction sales receipt must be kept by the licensed authorized organization or Unit in order to substantiate compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(2) - (4) (No change.)

§402.506. Disbursement Records Requirements.

(a) (No change.)

(b) Examples of [The] records that [listed below] are acceptable to substantiate bingo expenses for each type of expense are:

(1) (No change.)

(2) Written lease agreement[, if any,] between the commercial lessor and the licensed authorized organization or unit stating the amount of rent charged for the use of bingo premises. If there is no written agreement, the organization must support the rental payments with an invoice from the lessor stating location, rental dates, and rental amounts by occasion.

(3) - (10) (No change.)

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

(e) All expenses from the bingo checking account must be listed on a Cash Disbursements Journal on forms provided by the Commission or in another format that shows the information for each check

written, electronic fund transfers, bank fees, and cash shortages or overages. If any licensed authorized organized organization maintains its records on a commercially available accounting software package (e.g. Quicken), use of the standard accounting features of the package shall meet the requirements of this section.

(1) (No change.)

(2) Cash Disbursement Journal Required Information:

[~~(A) organization or unit name;~~]

[~~(B) taxpayer or unit number;~~]

[~~(C) calendar quarter;~~]

(A) [~~(D)~~] date of check, withdrawal or electronic funds transfer transaction;

(B) [~~(E)~~] check number, transaction number or confirmation number;

(C) [~~(F)~~] name of payee;

(D) [~~(G)~~] amount of expense;

(E) [~~(H)~~] expense category--each expense item shall correspond to the category on the Texas Bingo Quarterly Report; and

(F) [~~(I)~~] totals--Each expense category shall be totaled quarterly and match the information reported to the Commission on the Texas Bingo Quarterly Report. Any changes made on the Texas Bingo Quarterly Report shall be documented on the Cash Disbursements Journal.

(f) - (g) (No change.)

§402.511. Required Inventory Records.

(a) - (d) (No change.)

(e) The perpetual inventory of pull-tab bingo tickets shall contain:

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

(6) number of tickets sold, missing, or damaged by occasion date; [~~and~~]

(7) number of pull-tab tickets remaining if the deal is closed; and[~~.~~]

(8) occasion date(s) the pull-tab tickets were sold.

§402.514. Electronic Fund Transfers.

(a) (No change.)

(b) Controls Over Electronic Fund Transfers.

(1) Licensed authorized organizations or units shall use for all EFT transactions the same financial policies, procedures, and controls that govern disbursement by check and the receipt of funds into the bingo bank account. (See §2001.452 of the Bingo Enabling Act and §402.505 of this chapter (relating to Permissible Expense) and §402.506 of this chapter (relating to Disbursement Records Requirements)).[~~)~~]

(2) The licensed authorized organization or unit shall implement the following controls for EFT transactions.

(A) (No change.)

(B) The licensed authorized organization or unit shall maintain documentation of [~~board~~] approval of changes in the person(s) authorized to execute electronic funds transfers. Documentation may include but is not limited to: meeting minutes, bank account signature cards, or copies of applications to the financial institution to authorize individuals access to perform on-line banking in association with the bingo bank account or unit bank account.

(3) The bingo chairperson, or in the case of an accounting unit, the individual authorized in writing by each unit member's bingo chairperson, and bookkeeper shall review accounting records and bank statements to ensure that only authorized EFTs are executed. Each EFT shall be accounted for when completing monthly bank reconciliations.

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

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

Filed with the Office of the Secretary of State on April 18, 2016.

TRD-201601834
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §§402.600, 402.602, 402.603

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.600. Bingo Reports and Payments.

(a) (No change.)

(b) Quarterly reports, supplements, and payments due to be submitted on a date occurring on a Saturday, Sunday, or legal holiday will be due the next business day. The report will be deemed filed when deposited with the United States Postal Service or private mail service, postage or delivery charges paid and the postmark or shipping date indicated on the envelope is the date of filing. For quarterly reports and supplements submitted electronically, the report will be deemed filed as of the date and time sent from the specified e-mail address.

(c) Signature provisions.

(1) For the valid filing of paper quarterly reports and supplements, the bingo chairperson, an officer, director, or bookkeeper must sign the report. By signing a report, the bingo chairperson, officer, director, or bookkeeper declares that the information in the report is true and correct to the best of their knowledge and belief.

(2) For the valid filing of electronic quarterly reports and supplements, the signature will be the email address of the person sending the quarterly report.

(d) Quarterly Report for information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form prescribed by the Commission or in an electronic format

prescribed by the Commission a quarterly report for financial and statistical information relating to the conduct of bingo games. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter even if there were no games conducted during that quarter. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

(3) (No change.)

(e) Quarterly report for information relating to the lease of bingo premises.

(1) A commercial lessor holding a license to lease bingo premises must file on a form prescribed by the Commission or in an electronic format prescribed by the Commission a quarterly report stating the rental income received. The report shall also include information regarding property taxes, insurance premiums, and utility expenses which are paid by the lessor, and reimbursed by an authorized organization or unit to the lessor. The report and supplements must be filed with the Commission on or before the 25th day of the month following the end of the calendar quarter regardless of whether income was received. Failure to file a required report or supplement by the due date may result in an administrative penalty.

(2) The report and supplements must be filed under oath attesting to the information being true and correct. Each officer and director is responsible for knowing the contents of the report and supplements. The person signing the report must promptly provide a copy of the report and supplements to such officer and director upon his/her request.

[~~(3) The Commission may deny a renewal application or revoke a license of a commercial lessor holding a license to lease bingo premises license if the licensee remits to the Commission two insufficient checks for rental tax within four quarters.~~]

(f) Quarterly report for information relating to a manufacturer or distributor license.

(1) (No change.)

(2) The report and supplements shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter.

(3) The report and supplements must be filed under oath attesting to the information being true and correct.

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports or supplements three times within four consecutive quarters.

(5) Failure to file a required report or supplement by the due date may result in an administrative penalty.

(g) (No change.)

(h) Failure to receive forms. The failure of a licensee to receive forms from the Commission does not relieve the licensee from the requirement of filing reports and remitting prize fees [~~or taxes~~] as applicable on a timely basis.

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

(k) The Commission will deny a renewal application for a license to conduct bingo or a license to lease bingo premises or revoke a license to conduct bingo or a license to lease bingo premises if the licensee has failed to pay timely the prize fee [~~or rental tax~~] due three times within four consecutive quarters and a final jeopardy determination has been made by the Commission for three of the four consecutive quarters in accordance with Occupations Code §2001.510 and §2001.511.

(l) Extensions.

(1) Filing extension because of natural disaster.

(A) The Director will grant to a licensee who has been identified as a victim of a natural disaster an extension of not more than 90 days to file a quarterly report and supplements or pay [~~rental tax or~~] prize fees provided the licensee has filed a timely request for an extension. In determining the natural disaster victims, the Commission shall recognize the counties that have been identified by the Office of the Governor or the Comptroller of Public Accounts.

(B) The person owing the quarterly report, supplements, [~~rental tax~~] or prize fees must file a written request for an extension at any time before the expiration of five working days after the original due date in order to obtain an extension.

(C) If an extension under this paragraph is granted, interest on the unpaid [~~rental tax or~~] prize fee does not begin to accrue until the day after the day on which the extension expires, and [~~rental tax,~~] prize fees[~~,~~] and penalties are assessed and determined as though the last day of the extension were the original due date.

(2) Filing extension for reasons other than natural disaster.

(A) The Director may grant an extension of not more than thirty (30) days for the filing of a quarterly report and supplements. Before a request for extension may be granted, a written request setting out the reasons or grounds for an extension and 90% of the prize fees [~~or rental tax~~] estimated to be due must be received by the Commission postmarked on or before the due date of the quarterly report.

(B) (No change.)

(C) If the request is denied, there will be no penalty assessed if the return is filed and remaining prize fee [~~or rental tax~~] is paid not later than ten days from the date of the denial of the request of the extension.

(3) (No change.)

(m) Rounding. Quarterly report entries must be rounded to whole dollar amounts. To round off amounts to the nearest whole dollar, drop amounts under 50 cents and increase amounts from 50 - 99 cents to the next dollar. A quarterly report will not be considered inaccurate based on rounding numbers provided that such rounding does not result in more than a $5.00 variance when all entries are summed up.

§402.602. Waiver of Penalty, Settlement of Prize Fees, Rental Tax, Penalty and/or Interest.

(a) (No change.)

(b) If a prize fee or rental tax is owed for an inactive account, the Charitable Bingo Operations Division will not consider a request for a penalty or interest waiver until the principal is paid in full. The Division will notify the inactive account that a prize fee or rental tax is owed and provide the inactive account with any existing documents that support the delinquency determination. The Division may provide such notice and documentation to any officer, director, or business contact listed in the inactive account's most recent filing with the Commis-

sion. Failure to produce documents supporting the delinquency determination does not limit the Division's ability to collect the debt.

(c) (No change.)

§402.603. Bond or Other Security.

(a) Bond or Other Security Required.

(1) An applicant for a regular license to conduct charitable bingo must submit security consistent with the provisions of this section. A licensed authorized organization must maintain the security until the organization ceases to conduct bingo and the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the security amount for a regular license to conduct charitable bingo is based on the license class. The security amount is:

(i) Class A - $125.00.

(ii) Class B - $325.00.

(iii) Class C - $600.00.

(iv) Class D - $825.00.

(v) Class E - $1,225.00.

(vi) Class F - $1,800.00.

(vii) Class G - $2,125.00.

(viii) Class H - $2,675.00.

(ix) Class I - $3,275.00.

(x) Class J - $7,000.00

(B) If at any time a licensed authorized organization fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, then the organization's security amount may be calculated at three times its highest quarterly prize fee for the four most recent quarters or for the highest quarter filed if less than four.

(C) If a licensed authorized organization has fully paid all prize fees and associated penalties, if any, prior to a final jeopardy determination for eight (8) consecutive quarters, the amount of the requisite security will be reduced to $100.00. If at any time an organization paying the reduced security amount fails to fully pay its requisite prize fees and any associated penalties and interest by the due date and a jeopardy determination becomes final, then the Commission may calculate the organization's security amount in accordance with §402.603(a)(1)(A) or (B) of this chapter.

(2) An applicant for a manufacturer's license must submit a cash bond or bond in the amount of $10,000 issued by a surety company chartered or authorized to do business in this state. A licensed manufacturer must maintain the bond until the license is relinquished or revoked.

(3) An applicant for a unit manager license must submit security consistent with the provisions of this section. A licensed unit manager must maintain the security until the license is relinquished or revoked.

(A) Except as otherwise provided in this section, the unit manager's security amount shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter.

(B) If at any time a unit manager fails to fully pay the unit's requisite prize fees by the due date and a jeopardy determination becomes final, the security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. If the unit manager changes, the new unit manager must file security.

(C) Members of an accounting unit with a licensed unit manager are not required to submit security until the member withdraws or is removed from the unit.

(4) Accounting Units.

(A) An accounting unit may submit and maintain one bond or other security to cover each of the unit's member organizations. Except as otherwise provided in this section, the amount of the security shall be the aggregate of each unit member organization's security amount, as set in §402.603(a)(1) of this chapter. If a unit member organization subsequently withdraws or is removed from the unit, that organization is responsible for obtaining and maintaining the requisite security.

(B) If at any time an accounting unit fails to fully pay its requisite prize fees by the due date and a jeopardy determination becomes final, the unit's security amount may be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the organizations that were in the unit at the time of the prize fee delinquency. If a unit member organization withdraws or is removed from such a unit, that organization's security amount shall be equivalent to its share of the unit's security amount, and the unit's security amount may be reduced by an amount equivalent to the exiting organization's share. If another organization subsequently joins such a unit, the unit's security amount will increase by the amount of the newly-joined organization's security amount.

(b) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees:

(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.

(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.

(3) Letters of credit from financial institutions.

(4) United States Treasury bonds, readily convertible to cash.

(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.

(c) Forfeiture.

(1) If a licensed authorized organization, accounting unit, or unit manager pays less than the total amount of prize fee due, the Commission shall notify the licensed authorized organization, accounting unit, or unit manager of the delinquency via the "Texas Notice of Fee Due and Jeopardy Determination" for the quarter in which the liability exists.

(2) If the licensed authorized organization, accounting unit, or unit manager does not make the required payment by the date stated in the notice provided under subsection (c)(1), the Commission will demand the bond or other security or any part of the bond or other

security from the holder of the bond or other security necessary to pay the amount of prize fee due.

(3) The Commission will notify the licensed authorized organization, accounting unit, or unit manager and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.

(d) Release of Bond or Other Security. The Commission will release a bond or other security upon the relinquishment or revocation of the license for which the security was furnished, provided that the Commission determines that no prize fee, penalty, or interest remains due and payable. The Commission will notify the former licensee in writing that the security has been released. If an accounting unit maintains one bond or other security for its member organizations, and one or more of the unit member's licenses are relinquished or revoked, then the Commission will notify the accounting unit in writing that its security amount may be reduced to an amount sufficient to cover only current unit members.

[~~(1) An applicant for an original regular license to conduct charitable bingo or an original commercial license to lease bingo premises that has not been licensed previously must submit a bond or other security consistent with the provisions of this section.~~]

[~~(2) An applicant for an original license that has been licensed previously to conduct charitable bingo or lease bingo premises must submit a bond or other security in accordance with the provisions in paragraph (b)(4) of this section if the applicant was delinquent in the payment of prize fees at any time during the last two years of its previous license period.~~]

[~~(3) If the Commission determines that a licensed authorized organization, unit trustee organization, unit manager, or a licensed commercial lessor is delinquent in the payment of prize fees or rental taxes owed, the licensed authorized organization, unit trustee organization, unit manager, or licensed commercial lessor must submit a bond or other security consistent with the provisions of this section.~~]

[~~(4) For the purposes of paragraph (1) of this subsection, a licensed authorized organization, unit trustee organization, unit manager, or commercial lessor is delinquent in the payment of prize fees or rental taxes imposed if the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor fails to pay the prize fees or rental taxes by the due date and a jeopardy determination becomes final in accordance with Tex. Occ. Code §§2001.510 or 2001.511.~~]

[~~(5) A licensed authorized organization, unit trustee organization, unit manager, or commercial lessor is required to file a bond or other security with the commission at the time a jeopardy determination becomes final. An organization that joins a unit in which the licensed authorized organizations are required to file a bond or other security must also provide to the Commission a bond or other security.~~]

[~~(b) Bond or Other Security Amount. The amount of bond or other security required for an original regular license to conduct charitable bingo or an original commercial license to lease bingo premises is based on the applicant's license class as determined by the Commission through the licensing process.~~]

[~~(1) For an original regular license to conduct charitable bingo, the bond or other security amount required per license class is:~~]

[~~(A) Class A - $125.00.~~]

[~~(B) Class B - $325.00.~~]

[~~(C) Class C - $600.00.~~]

[~~(D) Class D - $825.00.~~]

[~~(E) Class E - $1,225.00.~~]

[~~(F) Class F - $1,800.00.~~]

[~~(G) Class G - $2,125.00.~~]

[~~(H) Class H - $2,675.00.~~]

[~~(I) Class I - $3,275.00.~~]

[~~(J) Class J - $7,000.00~~]

[~~(2) For an original commercial license to lease bingo premises, the bond or other security amount required per license class is:~~]

[~~(A) Class A - $50.00.~~]

[~~(B) Class B - $125.00.~~]

[~~(C) Class C - $175.00~~]

[~~(D) Class D - $250.00.~~]

[~~(E) Class E - $325.00.~~]

[~~(F) Class F - $400.00.~~]

[~~(G) Class G - $475.00.~~]

[~~(H) Class H - $550.00.~~]

[~~(I) Class I - $625.00.~~]

[~~(J) Class J - $1,825.00~~]

[~~(3) For a licensed authorized organization that is not delinquent in the payment of prize fees or rental taxes owed, is otherwise required to post a bond or other security, and joins a unit where the members of the unit are not required to post a bond, the amount of the bond or other security for the organization joining the unit shall be zero.~~]

[~~(4) For a licensed authorized organization or a commercial lessor that has a final jeopardy determination before a bond has been released, the bond or other security will be calculated at three times its highest quarterly prize fee or rental tax liability for the four most recent quarters or for the highest quarter filed if less than four.~~]

[~~(5) For a licensed authorized organization not in a unit or a commercial lessor that has a final jeopardy determination after a bond has been released, the bond or other security amount will be calculated at three times the licensed authorized organization's or commercial lessor's highest quarterly prize fee or rental tax liability for the four most recent quarters or for the highest quarter filed if less than four.~~]

[~~(6) For a licensed authorized organization in a unit with a designated agent that has a final jeopardy determination, the bond or other security will be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. The financial obligation for such security shall be divided equally among the number of organizations in the unit.~~]

[~~(7) For a unit trustee organization or unit manager that has a final jeopardy determination, the bond or other security amount will be calculated at three times the unit's highest quarterly prize fee liability for the four most recent quarters or for the highest quarter filed if less than four. If the unit trustee organization or unit manager changes, the new unit trustee organization or unit manager must file a bond or other security.~~]

[~~(c) Types of bonds or other security. The Commission will accept only the following types of bonds or other security as security for the payment of prize fees or rental taxes:~~]

[~~(1) Cash or check made payable to the state comptroller. Cash security will not earn interest for the licensee.~~]

[~~(2) Irrevocable assignments of accounts, including certificates of deposit or certificates of savings, in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the United States government. This security must be executed on an assignment form approved by the Commission.~~]

[~~(3) Letters of credit from financial institutions.~~]

[~~(4) United States Treasury bonds, readily convertible to cash.~~]

[~~(5) Surety bonds executed on a form approved by the Commission and issued only by a surety company chartered or authorized to do business in the State of Texas. The appointing instrument must be properly notarized and physically attached to the bond.~~]

[~~(d) Forfeiture.~~]

[~~(1) If a licensed authorized organization, unit trustee organization, unit manager, or commercial lessor pays less than the total amount of prize fee or rental tax due, the Commission shall notify the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor of the delinquency via the "Texas Notice of Tax/ Fee Due and Jeopardy Determination" for the quarter in which the liability exists.~~]

[~~(2) If the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor does not make the required payment by the date stated in the notice provided under subsection (e)(1), the Commission will demand the bond or other security or any part of the bond or other security from the holder of the bond or other security necessary to pay the amount of prize fee or rental tax liability due.~~]

[~~(3) The Commission will notify the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor and demand that a new or additional bond or other security for the specified amount be furnished within 20 days of the date of such notice. Failure to comply with the requirements of the notice within the 20 day period will result in the denial of an application for renewal or revocation of the license.~~]

[~~(e) Release of Bond or Other Security.~~]

[~~(1) When a bond or other security is required in accordance with subsection (a)(1), the bond or other security will not be released until the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor has timely paid all prize fees or rental taxes for two consecutive years.~~]

[~~(2) When a bond or other security is required in accordance with subsection (a)(2), the bond or other security will not be released until the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor has timely paid all prize fees or rental taxes for eight consecutive quarters.~~]

[~~(3) When the licensed authorized organization, unit trustee organization, unit manager, or commercial lessor ceases to conduct bingo, serve as unit trustee organization or unit manager, or lease bingo premises, or if the license is denied or revoked by the Commission for any reason, the Commission will release a bond or other security if the Commission determines that no amount of prize fee, rental tax, penalty, or interest remains due and payable.~~]

[~~(4) The Commission will notify the licensee, unit trustee organization, unit manager, or commercial lessor in writing that a bond or other security has been released.~~]

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 April 18, 2016.

TRD-201601835
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

♦ ♦ ♦

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §§402.703, 402.706 - 402.708

The rule amendments are proposed under: (1) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (2) §467.102 of the Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed rule amendments implement Chapter 2001 of the Occupations Code.

§402.703. Audit Policy.

(a) - (d) (No change.)

(e) Audit Fieldwork. Any time after the conclusion of the audit entrance conference, the auditor(s) may initiate and conduct the audit fieldwork at the licensee's business office, bingo premises, bookkeeper's office, or accountant's office [~~a location designated by the auditor(s)~~]. When conducting audit fieldwork, the auditor(s), at their discretion, may use a detailed auditing procedure or a sample and projection auditing method. A sample and projection auditing method may include, but is not limited to, manual sampling techniques, computer-assisted audit techniques, analytical procedures, financial projections, and auditor recompilation from reliable independent sources.

(f) - (g) (No change.)

§402.706. Schedule of Sanctions. [~~Standard Administrative Penalty Guideline.~~]

(a) The purpose of this section is to provide guidance for administering sanctions [~~an administrative penalty~~] to licensees and other persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Schedule of Sanctions attached to §402.706(c) provides a list of the most common violations and the sanctions generally assessed for those violations, though the Commission may deviate from the schedule if it has a reasonable basis to do so. The objectives for applying sanctions [~~an administrative penalty~~] are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This section [~~guideline~~] is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

(b) The Commission, through the Director of the Charitable Bingo Operations Division or their [~~his~~] designee, may offer settlements to persons charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Schedule of Sanctions [~~Standard Administrative Penalty Chart~~] incorporated into this section.
Figure: 16 TAC §402.706(c)

(d) The following words and terms, when used in this section and §402.707, shall have the following meanings, unless the context clearly indicates otherwise:

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

(6) Sanctions--revocation and suspension of a license, denial or an original or renewal application, denial of a bingo worker registry application, removal from the registry of bingo workers, administrative penalty, and warning letter.

(e) (No change.)

(f) Additional remedies may be imposed along with or in lieu of sanctions, [~~an administrative penalty~~] which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; or a disbursement of net proceeds in order to comply with the [~~minimum 35%~~] charitable distribution requirement[~~; suspension, revocation or denial of a license; or denial or removal from the registry of approved workers~~].

(g) A settlement agreed to under this section shall be in the form of a written Memorandum of Agreement and Consent Order prepared by the Commission that must be signed by both parties. A Memorandum of Agreement and Consent Order shall contain findings of fact and conclusions of law. The conditions of the settlement, including the imposition of sanctions, [~~payment of an administrative penalty~~] shall be completed within the time frame provided for in the settlement. Failure to comply with the conditions of the settlement may subject the respondent to further administrative action.

(h) The list of [~~statutory~~] violations in the Schedule of Sanctions [~~Standard Administrative Penalty Chart~~] is not an exclusive list of violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(i) If a person is charged with a repeat violation within 36 months (3 years) of a previous [~~the first~~] violation, then the sanction [~~penalty~~] for a repeat violation will be imposed according to the Schedule of Sanctions [~~Standard Administrative Penalty Chart~~] for repeat violations.

(j) The sanction(s) imposed [~~amount of a penalty or the degree to which a remedy is applied~~] will be determined by considering the following factors, as applicable:

(1) - (2) (No change.)

(3) the action(s) [~~amount~~] necessary to deter future violations;

(4) - (5) (No change.)

(k) (No change.)

(l) The Commission may impose lesser sanctions than those listed in the Schedule of Sanctions for a particular violation if mitigating circumstances exist, including mitigating circumstances described in §402.706(j)(5)(A) - (E).

§402.707. Expedited Administrative Penalty Guideline.

(a) (No change.)

(b) The list of statutory violations in the Expedited Administrative Penalty Chart is not an exclusive list of violations that may be expedited. The scope of this guideline will be limited to violations of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules that are identified by the Director or their [~~his~~] designee.

(c) Upon completion of an examination, inspection, audit, or investigation, and after which both parties have agreed that an alleged violation of the Bingo Enabling Act or the Charitable Bingo Administrative Rules can be resolved expeditiously, the Director or their [~~his~~] designee may cause a Notice of Administrative Violation and Settlement Agreement (NAVSA) to be issued to an authorized representative for the respondent.

(d) The NAVSA shall include the following information:

(1) - (7) (No change.)

(8) notice that if the person does not accept the settlement offered, they may request an informal dispute resolution conference in accordance with §402.708 of this chapter or a hearing on the occurrence of the violation, the amount of the penalty or both; and

(9) (No change.)

(e) The respondent shall have 20 calendar days from the date the respondent receives the NAVSA to accept the recommendation of the Director, including the recommended administrative penalty; or make a written request for a hearing on the determination. The respondent shall have 10 calendar days from the date the respondent receives the NAVSA to request an informal dispute resolution conference, which must occur within 20 calendar days of the respondent's receipt of the NAVSA. If notification of acceptance or the written request for a hearing is not made within 20 days, or if an informal dispute resolution conference does not resolve the dispute, the Director shall cause a hearing to be set and give notice of the hearing to the respondent. The opportunity for an agreement in accordance with this subsection will expire.

(f) (No change.)

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations.
Figure: 16 TAC §402.707(g)

§402.708. Dispute Resolution.

(a) What are the definitions for the terms used in this rule?

(1) - (2) (No change.)

(3) Dispute resolution conference--An informal meeting to resolve a disputed issue(s) related to a Notice of Administrative Violation and Settlement Agreement (NAVSA), an audit finding(s) contained within a final audit report, a determination letter or a [~~disputed issue(s) contained within a~~] notice of opportunity to show compliance letter.

(4) (No change.)

(b) Who may request a dispute resolution conference? A licensee that does not agree with the findings in its NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter may request a dispute resolution conference.

(c) How do I request a dispute resolution conference?

(1) You may request a dispute resolution conference by completing and submitting a Request for Informal Dispute Resolution [~~Form~~] to the Director.

(2) Disputed issues must be identified on the request [~~form~~].

(3) The request [~~form~~] must be signed by:
Figure: 16 TAC §402.708(c)(3)

(4) A request for a dispute resolution conference related to a NAVSA must be submitted in accordance with §402.707(e). All other requests for a dispute resolution conference must be submitted [~~You must submit the completed Request for Informal Dispute Resolution Form~~] no later than 15 working days from the latest date of receipt of a determination letter, the final audit report, or notice of opportunity to show compliance letter.

(5) (No change.)

(d) Under what circumstances will the Director deny a request for a dispute resolution conference? The Director will not grant a request for a dispute resolution conference if:

(1) You are not a licensee that disputes the findings in the NAVSA, final audit report, determination letter or the information in a notice of opportunity to show compliance letter;

(2) You fail to timely submit the completed Request for Informal Dispute Resolution [~~Form~~] as required in subsection (c)(4) of this section or §402.707(e) of this chapter; or

(3) (No change.)

(e) When and where will the Dispute Resolution Conference be held?

(1) Charitable Bingo Operations Division staff will contact you within 15 calendar days from the date we receive a Request for Informal Dispute Resolution [~~Form~~], in order to schedule a mutually agreeable date, time, and location for the dispute resolution conference. However, for conferences related to a NAVSA, the Division will contact the respondent in sufficient time to schedule the conference within 20 days of the respondent's receipt of the NAVSA, as required under §402.707(e).

(2) (No change.)

(3) You must contact the Commission at least 24 hours prior to the scheduled conference time to reschedule a dispute resolution conference. However, in the event of unforeseen [~~unforseen~~] events, upon agreement of the parties, a dispute resolution conference may be rescheduled.

(f) What happens if I don't attend or reschedule a Dispute Resolution Conference? The dispute resolution process will end. The administrative process will continue and a formal hearing may [~~will~~] proceed. We will notify you of the date of the administrative hearing.

(g) - (l) (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 April 18, 2016.

TRD-201601836

Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

♦ ♦ ♦

SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.413

The Texas Lottery Commission (Commission) proposes new rule 16 TAC §402.413 (Military Service Members, Military Veterans, and Military Spouses). The purpose of the proposed new rule is to implement Occupations Code Chapter 55, which requires state agencies that issue occupational licenses to adopt rules and policies pertaining to the licensing of active duty military personnel, their spouses, and military veterans. Among other things, Chapter 55 requires agencies to: (1) exempt active duty military personnel from late license renewal fees/penalties under certain circumstances; (2) quickly process applications and issue licenses for active duty military personnel, their spouses, and military veterans; and (3) waive license fees for active duty military personnel, their spouses, and military veterans in certain circumstances. Proposed new rule §402.413 is intended to satisfy the Commission's obligations under Chapter 55.

Kathy Pyka, Controller, has determined that, while the proposed rule will result in a loss of revenue to the state, the amount cannot be quantified. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an economic effect on small businesses as defined in Government Code §2006.001(2).

Alfonso D. Royal, III, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rule will be in effect, the anticipated public benefits are compliance with statutory provisions and recognition of active duty military service members, their spouses, and military veterans for the services they have provided to the United States and the State of Texas.

The Commission requests comments on the proposed new rule from any interested person. Comments on the proposed new rule may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in order to be considered. The Commission will hold a public hearing on this proposal at 10:00 a.m. on Wednesday, May 11, 2016, at 611 E. 6th Street, Austin, Texas 78701.

The new rule is proposed under: (1) Chapter 55 of the Occupations Code (specifically §§55.002, 55.004, 55.007, and 55.008), which requires state agencies to adopt rules related to the issuance of licenses to active duty military personnel, their spouses, and military veterans; (2) §2001.054 of the Occupations Code, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and (3) §467.102 of the Government Code, which authorizes the Com-

mission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Chapters 55 and 2001 of the Occupations Code.

§402.413. Military Service Members, Military Veterans, and Military Spouses.

(a) The following terms used in this section are defined in §55.001 of the Occupations Code as follows:

(1) "Active duty" means 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 §437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Military service member" means a person who is on active duty.

(4) "Military spouse" means a person who is married to a military service member.

(5) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) As soon as practicable after a military service member, military veteran, or military spouse applies in his or her individual capacity for a commercial lessor license, distributor license, manufacturer license, unit manager license, or listing on the bingo worker registry, the Commission will process the application and, if warranted, issue the license or list the applicant on the bingo worker registry. A military service member or military veteran must provide the Commission with definitive proof of his or her current or prior military service. A military spouse must provide the Commission with:

(1) definitive proof of his or her spouse's current military service; and

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member.

(c) The Commission will waive the license or bingo worker registry fee for a military service member or military veteran that applies in his or her individual capacity for a commercial lessor license, distributor license, manufacturer license, unit manager license, or listing on the bingo worker registry. The applicant must provide the Commission with definitive proof of the applicant's current or prior military service.

(d) The Commission will waive the license or bingo worker registry fee for a military spouse that applies in his or her individual capacity for a commercial lessor license, distributor license, manufacturer license, unit manager license, or listing on the bingo worker registry, provided that the applicant holds a current license issued by another state or jurisdiction that is substantially equivalent to the license or bingo worker registry for which the applicant is applying. The applicant must provide the Commission with:

(1) definitive proof of his or her spouse's current military service;

(2) his or her official marriage certificate or other definitive proof of his or her marriage to a military service member; and

(3) a photocopy of his or her current out-of-state license that is substantially equivalent to the license or bingo worker registry for which the applicant is applying.

(e) An individual licensed in his or her individual capacity as a commercial lessor, distributor, manufacturer, or unit manager is exempt from the late license renewal fee provided for in §402.411(e) of this chapter if the individual can demonstrate, to the satisfaction of the Commission, that the individual failed to renew his or her license in a timely manner because the individual was serving as a military service member.

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 April 18, 2016.

TRD-201601837
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 344-5012

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

The Texas Education Agency (TEA) proposes amendments to §§97.1051, 97.1055, 97.1059, 97.1065, and 97.1067; the repeal of §§97.1061, 97.1063, and 97.1064; and new §§97.1061, 97.1063, 97.1064, and 97.1066, concerning Accreditation Status, Standards, and Sanctions. The proposed amendments, repeals, and new sections would update processes and procedures related to campus sanctions and interventions to reflect changes made by House Bill (HB) 1842, 84th Texas Legislature, Regular Session, 2015.

HB 1842, 84th Texas Legislature, Regular Session, 2015, amended the Texas Education Code (TEC), Chapter 39, relating to interventions and sanctions for campuses that do not meet state accountability standards.

The proposed revisions to 19 TAC Chapter 97, Subchapter EE, would reflect changes made by HB 1842, as follows.

The proposed amendment to 19 TAC §97.1051, Definitions, would revise definitions to: provide a definition of board of managers, which must, if possible, include the statutory requirements of community leaders, business representatives, and education experts; provide a definition of campus turnaround that highlights achieving acceptable performance within two years, which is the timeframe required by the statutory changes to TEC, §39.107, for a turnaround plan to achieve its purpose, and that clarifies that interventions initiated by statute due to "unacceptable performance" will be those ratings established under the academic accountability manual as unacceptable in any particular year; remove the definition of campus closure, which prohibited its use for educational purposes as the changes to TEC, §39.107, allow its use for educational purposes in certain instances. Proposed new §97.1066 would detail current options; remove language regarding campus closure, which,

along with language regarding alternative management, would be moved to separate sections of rule to provide better clarity and organization of requirements; provide a definition of district coordinator of school improvement to ensure districts clearly identify an individual responsible for being a member of the campus intervention team; provide a definition of professional service provider as an educator approved by the commissioner as statute provides the commissioner the flexibility to require districts to select or be assigned a provider; and remove the definition of campus reconstitution to align with the statutory changes.

The proposed amendment to 19 TAC §97.1055, Accreditation Status, would provide clarifying language since legislative changes in HB 1842 authorized monitoring reviews in addition to investigations under TEC, §39.056. The proposed amendment would also provide clarification that grades, course credits, and diplomas issued by a school district prior to annexation would remain valid.

The proposed amendment to 19 TAC §97.1059, Standards for All Accreditation Sanction Determinations, would update a cross reference to the rule for financial accountability ratings.

The proposed repeal of 19 TAC §97.1061, Interventions and Sanctions for Campuses, would remove outdated provisions. Proposed new 19 TAC §97.1061, Interventions and Sanctions for Campuses, would provide clarifying language on the required sanctions and interventions for campuses that do not meet academic accountability standards. The proposed new rule would outline the Texas Accountability Intervention System (TAIS) continuous improvement process and specific intervention requirements for each consecutive year that a campus does not meet academic accountability standards.

The TAIS process is a research-based best practice for improving performance on low-performing campuses. The TAIS provides a framework for the campus intervention team to work with stakeholders to implement strategies that will address areas of low performance.

The proposed repeal of 19 TAC §97.1063, Campus Intervention Team, would remove repetitive requirements that are outlined in statute. Proposed new 19 TAC §97.1063, Campus Intervention Team, would provide clarification from statute about the role and members of the campus intervention team.

The proposed repeal of 19 TAC §97.1064, Reconstitution, would remove outdated provisions. Proposed new 19 TAC §97.1064, Campus Turnaround Plan, would update provisions from previous reconstitution requirements, which were repealed under the statutory changes of HB 1842. The proposed new rule would reflect new campus turnaround requirements by outlining the procedures, content, and timeline for developing and submitting a campus turnaround plan for commissioner approval, as follows.

Subsection (a) would impose the statutory requirement for creation of a turnaround plan after two consecutive years of poor performance.

As campus interventions apply to open-enrollment charters, subsection (b) would implement the statutory duty imposed on an open-enrollment charter to modify its charter to enact the turnaround plan. The proposal would also specify that the governing board must perform the duties imposed on boards of trustees.

Subsection (c) would implement statutory authorization to use regional education service centers.

Subsection (d) would implement new statutory provisions requiring input from parents and the community in developing the turnaround plan. The proposal would impose timelines necessary to ensure proper notice and inclusion of the input received.

Subsection (e) would implement the statutory requirement that parents, the community, and stakeholders provide input in developing the plan. The proposal would clarify that a campus-level committee and teachers must be included since the statutory requirement of a turnaround plan requires including comments from those entities.

Subsection (f) would implement statutory provisions requiring certain components of the turnaround plan.

Subsection (g) would require districts, after board of trustee approval, to submit the proposed campus turnaround plan electronically to the commissioner by March 1. As statute requires extensive planning, approval, and then implementation, this date and delivery method afford the greatest possibility of effectively achieving all three phases.

Subsection (h) would allow a district to implement the turnaround plan or implement a modified version even if the subsequent rating removes the requirement to implement the plan, as authorized by statute.

The proposed amendment to 19 TAC §97.1065, Repurposing, Alternative Management, or Campus Closure, would incorporate changes to commissioner determinations for campuses that do not meet academic accountability requirements. Specifically, the proposed amendment would: remove various references and provisions regarding repurposing, alternative management, and optional waiving of imposing sanctions as HB 1842 repealed these actions. Similarly, the proposed amendment would remove old law processes regarding when functions such as repurposing, alternative management, and closure would be used; impose the HB 1842 requirement that the commissioner must either, at the commissioner's discretion, close the campus or appoint a board of managers over the district upon five years of consecutive poor performance; clarify the commissioner's authority to not approve a campus turnaround plan resulting in campus closure, alternative management, or appointment of a board of managers to oversee district operations; and change the section title to "Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers."

Proposed new 19 TAC §97.1066, Campus Closure, would clarify the process and procedures in the event that the commissioner orders campus closure. As statute does not explicitly state a timeframe for closure, proposed new subsection (a) would clarify that the closure date will be defined by the commissioner for each decision. Proposed new subsections (b)-(d) would address the statutory requirements for when a building containing a closed campus may be used for alternative purposes and for a student's option to attend any other campus in the district.

The proposed amendment to 19 TAC §97.1067, Alternative Management of Campuses, would clarify the process and procedures in the event the commissioner orders alternative management. The proposed amendment includes the addition of language, which is proposed for removal from 19 TAC §97.1065, regarding the closure of a campus due to poor performance upon the return of the campus to district operation.

The proposed revisions would continue to require districts to submit targeted improvement plans and campus turnaround plans to the TEA for commissioner approval.

The proposed revisions would require campuses and districts to keep documentation of parental and stakeholder involvement in the development of targeted improvement plans and campus turnaround plans.

FISCAL NOTE. Sally Partridge, associate commissioner for accreditation and school improvement, has determined that for the first five-year period the proposed amendments, repeals, and new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the proposed rule actions and changes in law. There would be the need for three additional full-time employees to assist in the support of development and review of campus turnaround plans. During the legislative session in 2015, the Texas Legislature appropriated approximately $300,000 each year for Fiscal Years 2016 and 2017. There will be no additional costs for local government to comply with the proposed rule actions.

PUBLIC BENEFIT/COST NOTE. Ms. Partridge has determined that for each year of the first five years the proposed amendments, repeals, and new sections are in effect the public benefit anticipated as a result of enforcing the rule actions would be providing better alignment of commissioner's rules relating to interventions and sanctions for campuses with current law. The proposed rule actions would also provide clarity on the timing and requirements for campuses that do not meet academic accountability requirements for consecutive years. There is no anticipated additional costs to persons who are required to comply with the proposed rule actions, and the proposed rule actions will have no effect on local employment or local economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins April 29, 2016, and ends May 31, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* 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 April 29, 2016.

19 TAC §§97.1051, 97.1055, 97.1059, 97.1061, 97.1063 - 97.1067

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Texas Education Code (TEC), §39.052, which requires an annual evaluation of the accreditation status of each school district. This section specifically safeguards diplomas, course credit, and grade promotions granted prior to the revocation by the commissioner; TEC, §39.056, which authorizes the agency to conduct monitoring reviews or investigations in accordance with requirements of the statutory provisions; TEC, §39.104, which applies interventions and sanctions imposed by TEC, Chapter 39, on school districts and campuses to open-enrollment charters. The section authorizes the commissioner to adopt rules to apply the interventions; TEC, §39.106, which requires the placement of a campus intervention team by the commissioner when a campus's performance fails to meet standards established under TEC, §39.054(e). This section also describes the duties, public notice, guidelines for a needs assessment to be done by a campus intervention team, and required areas of recommendations. This statute allows the commissioner to authorize some substitutions of certain committees and plans. The statute requires a board of trustees to take certain actions such as conducting a public hearing and submitting the plans to the commissioner; TEC, §39.107, which prescribes certain actions that must occur when a campus has consecutive years of unacceptable performance. The statute requires the development of a turnaround plan for two consecutive years of poor performance, requires public notice and input in developing the turnaround plan, details certain requirements of the turnaround plan, and authorizes the commissioner to adopt rules governing procedures for application to charters. The statute also prohibits the approval of a campus turnaround plan unless the commissioner determines the plan will achieve acceptable performance within two years of implementation and authorizes a district to implement a turnaround plan (or modified version) even if subsequent performance removes the requirement to implement the plan. TEC, §39.107, authorizes the commissioner to adopt rules necessary to implement the section; TEC, §39.109, which authorizes the commissioner to require a district or campus to select or be assigned professional services at their expense. This requirement is in addition to other interventions and sanctions authorized by statute. The statute authorizes additional requirements by the commissioner with regard to professional services; and TEC, §39.112, which describes the duties and responsibilities of a board of managers. This statute includes a requirement for the commissioner to, if possible, appoint certain types of individuals to a board of managers.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the TEC, §§39.052, 39.056, 39.104, 39.106, 39.107, 39.109, and 39.112.

§97.1051. Definitions.

For purposes under Texas Education Code (TEC), Chapter 39, and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) Board of managers--A board appointed by the commissioner of education to serve as a governing body that must, if possible, include:

(A) community leaders;

(B) business representatives who have expertise in leadership; and

(C) individuals who have knowledge or expertise in the field of education.

(2) [~~(1)~~] Board of trustees--The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.

(3) [~~(2)~~] Campus--An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated or Not Rated: Data Integrity Issues. The definition of this term includes a charter school campus as defined by §100.1001(3)(C) of this title (relating to Definitions).

(4) Campus turnaround--A comprehensive change in an academically unacceptable campus that produces significant and sustainable gains in achievement within two years. For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.

[~~(3) Campus closure--Cessation of all instructional activity on the campus in each grade level served in the school year immediately preceding the closure of the campus. An order of closure does not preclude the district from reusing the facility for another purpose such as administration, storage, or instruction in other grades not served during the school year immediately preceding the closure of the campus.~~]

(5) [~~(4)~~] Charter school--This term has the meaning assigned by §100.1001(3) of this title. References to a charter school in TEC, Chapter 39, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.

(6) [~~(5)~~] Charter school site--This term has the meaning assigned by §100.1001(3)(D) of this title.

(7) District coordinator of school improvement (DCSI)--An employee of a school district in a leadership position in school improvement, in curriculum and instruction, or in another position with responsibility for student performance.

(8) [~~(6)~~] Newspaper of general circulation--A newspaper, as defined in Texas Government Code, §2051.044, that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.

(9) [~~(7)~~] Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

(10) Professional service provider (PSP)--An educator who has been vetted to provide on-site technical assistance for underperforming schools and districts either by the Texas Education Agency (TEA) or the TEA's technical assistance provider.

[~~(8) Reconstitution--~~]

[~~(A) The removal or reassignment of some or all campus administrative and/or instructional personnel in accordance with at least the minimum requirements of TEC, §39.107, taking into consideration proactive measures the district or campus has taken regarding campus personnel; and~~]

[~~(B) the implementation of a campus redesign, approved by the commissioner of education, that:~~]

[~~*(i)* provides a rigorous and relevant academic program;~~]

[~~*(ii)* provides personal attention and guidance;~~]

[~~*(iii)* promotes high expectations for all students; and~~]

[~~*(iv)* addresses comprehensive school-wide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.~~]

(11) [~~(9)~~] School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.

§97.1055. Accreditation Status.

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.

(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a

financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule;

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(7) An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.

(8) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

(9) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive.

(b) Determination of Accredited-Warned status.

(1) A district shall be assigned Accredited-Warned status if, beginning with its 2006 rating, the district is assigned:

(A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 [~~or Suspended--Data Quality under §109.1002~~] of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if, beginning with its 2006 rating, the district is assigned:

(A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 [~~or Suspended--Data Quality under §109.1002~~] of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if, beginning with its 2006 rating, the district is assigned:

(A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 [~~or Suspended--Data Quality under §109.1002~~] of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:

(i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.

(4) The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(5) Issuance of an accreditation status of Not Accredited-Revoked does not invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the effective date of the annexation of the district.

(e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1001 [~~§109.1002~~] of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;

(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and

(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).

(f) Required notification of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked status.

(1) A district assigned an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in a newspaper of general circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

(D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the

board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or

(D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.

§97.1059. Standards for All Accreditation Sanction Determinations.

(a) The commissioner of education shall impose district and campus accreditation sanctions under this subchapter individually or in combination as the commissioner determines necessary to achieve the purposes identified in §97.1053 of this title (relating to Purpose).

(b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA), and shall impose one or more accreditation sanctions on a district and its campuses as needed to address:

(1) each material deficiency identified by the TEA through its systems for district and campus accountability, including:

(A) an accreditation status under §97.1055 of this title (relating to Accreditation Status);

(B) an academic accountability rating under §97.1001 of this title (relating to Accountability Rating System);

(C) a financial accountability rating under §109.1001 [~~§109.1002~~] of this title (relating to Financial Accountability Ratings) or a financial audit or investigation;

(D) program effectiveness under §97.1071 of this title (relating to Special Program Performance; Intervention Stages) or other law;

(E) the results of a special accreditation investigation under Texas Education Code, §39.057;

(F) the results of an investigative report under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings); complaint investigation; special education due process hearing; or data integrity investigation, including an investigation of assessment or financial data; or

(G) other information related to subparagraphs (A)-(F) of this paragraph.

(2) any ongoing failures to address deficiencies previously identified or patterns of recurring deficiencies;

(3) any lack of district responsiveness to, or compliance with, current or prior interventions or sanctions; and

(4) any substantial or imminent harm presented by the deficiencies of the district or campus to the welfare of its students or to the public interest.

(c) If the commissioner identifies a district and one or more of its campuses for accreditation sanction under subsection (a) of this section, the commissioner may elect to combine activities to be undertaken at the district and campus levels as needed to achieve the purposes of each sanction.

(d) When making any campus-level determination under this subchapter, the commissioner shall also consider the district-level performance of the district on applicable academic, fiscal, and compliance standards.

(e) The commissioner must review at least annually the performance of a district for which the accreditation status or academic accountability rating has been lowered due to insufficient student performance and may not raise the accreditation status or rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

§97.1061. Interventions and Sanctions for Campuses.

(a) If a campus's performance is below any standard under Texas Education Code (TEC), §39.054(e), the campus shall engage in the Texas Accountability Intervention System (TAIS) continuous improvement process. The campus shall:

(1) assign members to a campus intervention team (CIT) as outlined in §97.1063 of this title (relating to Campus Intervention Team) and TEC, §39.106;

(2) establish a campus leadership team (CLT) that includes the campus principal and other campus leaders responsible for the development, implementation, and monitoring of the targeted improvement plan;

(3) conduct a data analysis related to areas of low performance;

(4) conduct a needs assessment based on the results of the data analysis, as follows.

(A) The needs assessment shall include a root cause analysis.

(B) Root causes identified through the needs assessment will be addressed in the targeted improvement plan and, if applicable, campus turnaround plan;

(5) create a targeted improvement plan, as follows.

(A) Input must be gathered from the principal; campus-level committee established under TEC, §11.251; parents; and community members, prior to the development of the targeted improvement plan, using the following steps.

(i) The campus must hold a public meeting at the campus. The campus shall take reasonable steps to conduct the meeting at a time and in a manner that would allow a majority of stakeholders to attend and participate. The campus may hold more than one meeting if necessary.

(ii) The public must be notified of the meeting 15 days prior to the meeting by way of the district and campus website, local newspapers or other media that reach the general public, and the parent liaison, if present on the campus.

(iii) All input provided by family and community members should be considered in the development of the final targeted improvement plan submitted to the Texas Education Agency (TEA).

(B) The completed targeted improvement plan must be presented at a public hearing and approved by the board of trustees.

(C) The targeted improvement plan must be submitted to the commissioner of education for approval according to TEA procedures and guidance; and

(6) monitor the implementation of the targeted improvement plan. The campus will submit updates to the TEA as requested that include:

(A) a description of how elements of the targeted improvement plan are being monitored; and

(B) data demonstrating the results of interventions from the targeted improvement plan.

(b) If a campus is assigned an unacceptable rating under TEC, §39.054(e), for a second consecutive year, the campus must engage in the processes outlined in subsection (a) of this section, and the campus must develop a campus turnaround plan to be approved by the commissioner as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(c) If a campus is assigned an unacceptable rating under TEC, §39.054(e) for a third or fourth consecutive year, the campus must engage in the processes outlined in subsection (a) of this section, and the campus must implement the commissioner-approved campus turnaround plan as described in §97.1064 of this title (relating to Campus Turnaround Plan).

(d) If a campus is assigned an unacceptable rating under TEC, §39.054(e) for a fifth consecutive year, the commissioner shall order the appointment of a board of managers to govern the district or closure of the campus.

(e) If a campus was assigned an unacceptable rating in the prior year but met standard in the current year, the campus will continue to engage in TAIS activities outlined in subsection (a) of this section with the following exceptions:

(1) the campus may release its CIT based on criteria set annually by the TEA; and

(2) the campus that developed a turnaround plan may modify that plan as described in §97.1064 of this title.

(f) Based on a campus's progress toward improvement, the commissioner may order a hearing if a campus's performance is below any standard under TEC, §39.054(e).

(g) Interventions and sanctions listed under this section begin upon release of preliminary ratings and may be adjusted based on final accountability ratings.

§97.1063. Campus Intervention Team.

(a) The campus intervention team (CIT) shall perform the duties outlined in Texas Education Code (TEC), §39.106, and oversee the activities outlined in §97.1061(a) of this title (relating to Interventions and Sanctions for Campuses) and §97.1064 of this title (relating to Campus Turnaround Plan).

(b) The CIT must include:

(1) a professional service provider (PSP); and

(2) a district coordinator of school improvement (DCSI). The DCSI must submit qualifications to the Texas Education Agency (TEA) for approval.

(c) The CIT shall perform the duties referenced in subsection (a) of this section in collaboration with the campus leadership team (CLT) as outlined in §97.1061(a) of this title and §97.1064 of this title.

(d) CIT members as defined in subsection (b) of this section and the campus principal shall attend TEA-sponsored trainings on interventions and sanctions.

§97.1064. Campus Turnaround Plan.

(a) If a campus is assigned an unacceptable rating under Texas Education Code (TEC), §39.054(e), for two consecutive years, the campus must develop a campus turnaround plan to be approved by the commissioner of education in accordance with TEC, §39.107.

(b) A charter campus subject to this section must revise its charter in accordance with §100.1033 of this title (relating to Charter Amendment). The governing board of the charter performs the function of the board of trustees for this section.

(c) The district may request assistance from a regional education service center or partner with an institution of higher education in developing and implementing a campus turnaround plan.

(d) Within 60 days of receiving a campus's preliminary accountability rating the district must notify parents and community members that the campus received an unacceptable rating for two consecutive years and request assistance in developing the campus turnaround plan.

(1) The district shall notify stakeholders of their ability to review the completed plan on the district website at least 30 days before the final plan is submitted to the board of trustees as described in TEC, §39.107(b-3).

(2) All input provided by family and community members must be considered in the development of the final campus turnaround plan submitted to the Texas Education Agency (TEA).

(e) The district shall provide the following groups an opportunity to review and comment on the completed plan before it is submitted for approval to the board of trustees:

(1) the campus-level committee established under TEC, §11.251. If the campus is not required to have a campus-level committee under TEC, §11.251, the district shall provide an opportunity for professional staff at the campus to review and comment on the campus turnaround plan;

(2) teachers at the campus;

(3) parents; and

(4) community members.

(f) A campus turnaround plan must include:

(1) a detailed description of the academic programs to be offered at the campus, including instructional methods, length of school day and school year, academic credit and promotion criteria, and programs to serve special student populations;

(2) a detailed description of the budget, staffing, and financial resources required to implement the plan, including any supplemental resources to be provided by the district or other identified sources;

(3) written comments received from stakeholders described in subsection (e) of this section; and

(4) the term of the charter, if a district charter is to be granted for the campus under TEC, §12.0522.

(g) Upon approval of the board of trustees, the district must submit the campus turnaround plan electronically to the TEA by March 1 unless otherwise specified.

(h) A campus may implement, modify, or withdraw its campus turnaround plan with board approval if the campus receives an academically acceptable rating for the school year following the development of the campus turnaround plan.

§97.1065. Commissioner Determinations for Decisions Preceding [~~Repurposing,~~] Alternative Management, [~~or~~] Campus Closure, or Board of Managers.

(a) Action required. The commissioner of education shall order:

(1) alternative management or closure of a campus or appoint a board of managers to govern the district if the campus turnaround plan is not approved as outlined in §97.1064 of this title (relating to Campus Turnaround Plan); and

(2) closure of a campus or appoint a board of managers to govern the district if the campus is assigned an unacceptable performance rating under the state academic accountability system for three consecutive school years after the campus is ordered to submit a campus turnaround plan as outlined in §97.1064 of this title.

[~~(a) Action required. The commissioner of education shall order repurposing, alternative management, or closure of a campus as provided in this section, if the campus is assigned an unacceptable performance rating under the state academic accountability system for the third consecutive school year after reconstitution is required to be implemented under §97.1064 of this title (relating to Reconstitution).~~]

(b) Other actions permitted. In combination with action under this section, the commissioner may impose on the district or campus any other sanction under Texas Education Code (TEC), Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title (relating to Purpose). In particular, the commissioner may [~~impose sanctions as specified in §97.1064(d) of this title and/or may~~] assign a monitor, conservator, management team, or board of managers in order to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted [~~school~~] improvement plan [~~(SIP)~~] and the campus turnaround [~~reconstitution~~] plan.

(c) Petition allowed. In accordance with TEC, §39.107(e-2), for a campus subject to an order of [~~repurposing, alternative management, or~~] closure or appointment of a board of managers to govern the district under subsection (a) of this section, if a written petition, signed by the parents of a majority of the students enrolled at the campus and specifying the action requested under subsection (a) of this section, is presented to the commissioner in accordance with this section and related procedures adopted by the Texas Education Agency (TEA), the commissioner shall, except as otherwise authorized by this section, order the specific action requested. If the board of trustees of the school district in which the campus is located presents to the commissioner, in accordance with this section and related procedures adopted by the TEA, a written request that the commissioner order a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition, along with a written explanation of the basis for the board's request, the commissioner may order the action requested by the board of trustees.

(1) A written petition under this subsection must be:

(A) finalized and submitted to the district superintendent no later than October 15 for purposes of validation;

(B) certified by the district as a valid petition in accordance with paragraph (2) of this subsection;

(C) adopted as a valid petition by the board of trustees in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(D) if determined to be a valid petition, submitted by the district superintendent to the commissioner no later than December 1.

(2) Only a written petition determined to be valid in accordance with this section and TEA procedures may be submitted to the commissioner. At a minimum, the following criteria must be met for a petition to be determined valid.

(A) The petition must include all information required by the TEA as reflected in TEA model forms and related procedures and must be submitted to the district superintendent in accordance with the deadline established in paragraph (1)(A) of this subsection.

(B) The petition must clearly state the sanction action under subsection (a) of this section being requested by the parents.

(C) In accordance with this subparagraph, the parent(s) of more than 50% of the students enrolled at the campus must provide the handwritten or typed name and an original signature on the petition.

(i) For the purposes of the petition, a parent means the parent who is indicated on the student registration form at the campus.

(ii) A student will be considered enrolled at the campus for the purposes of the petition if the student is enrolled and in membership at the campus on a TEA-determined enrollment snapshot date, as reflected in TEA procedures [~~(generally the Public Education Information Management System (PEIMS) fall data submission for that school year)~~].

(iii) For the purposes of determining whether parents of more than 50% of the students enrolled at the campus have signed the petition, only one parent signature per enrolled student can be counted by the district in its calculation assuring validity of the petition.

(3) If the board of trustees of the school district requests that the TEA consider a specific action under subsection (a) of this section other than the action requested by the parents in a valid petition and submitted to the TEA in accordance with this subsection, the board must submit a written request to the commissioner and include a written explanation of the basis for the board's request for an action other than the one reflected in a valid parent petition. Any written request must be:

(A) approved by a majority of the board members in an action taken in a public meeting conducted in compliance with the Texas Open Meetings Act; and

(B) submitted to the commissioner no later than December 15 in accordance with procedures established by the TEA.

(4) If a valid parent petition under paragraph (1) of this subsection or board of trustees submission under paragraph (3) of this subsection requests that the commissioner order campus closure, [~~repurposing,~~] the district must submit, no later than January 30, a comprehensive plan for campus closure [~~repurposing~~] that meets the requirements of the TEC, §39.107, and §97.1066 of this title (relating to Campus Closure) [~~subsection (d) of this section~~].

(5) Following the submission to the TEA of a valid petition and any subsequent board request under this section, the commissioner

will order, no later than February 15, a sanction in compliance with the TEC, §39.107, and this section. The sanction shall be implemented for the subsequent school year regardless of the state academic accountability rating assigned to the campus in that school year. For example: A campus is assigned an unacceptable performance rating for the fifth [~~sixth~~] consecutive year on or around August 8, 2016 [~~June 15, 2013~~]. In February 2017 [~~2014~~], the commissioner orders a sanction under this paragraph. The sanction must be implemented for the 2017-2018 [~~2014-2015~~] school year.

(6) Notwithstanding this subsection, in the case of a charter school granted under the TEC, Chapter 12, Subchapter D or E, the commissioner shall retain authority under the TEC and Chapter 100, Subchapter AA, Division 2, of this title (relating to Commissioner Action and Intervention) to take any adverse action allowed by statute and rule and to approve or disapprove any proposed change in campus or charter structure resulting from a petition or board request under this subsection.

~~[(d) Campus repurposing.]~~

~~[(1) If the commissioner orders repurposing of a campus under this section, the school district shall develop a comprehensive plan for repurposing the campus and submit the plan to the board of trustees for approval and to the commissioner for approval, using the procedures described by §97.1063 of this title (relating to Campus Intervention Team) for SIP approvals. The plan must include a description of a rigorous and relevant academic program for the campus. The plan may include various instructional models.]~~

~~[(2) The commissioner may not approve the repurposing of a campus unless:]~~

~~[(A) all students in the assigned attendance zone of the campus in the school year immediately preceding the repurposing of the campus are provided with the opportunity to enroll in and are provided transportation on request to a campus approved by the commissioner, unless the commissioner grants an exception because there is no other campus in the district in which the students may enroll;]~~

~~[(B) the principal is not retained at the campus, unless the commissioner determines that students enrolled at the campus have demonstrated significant academic improvement; and]~~

~~[(C) teachers employed at the campus in the school year immediately preceding the repurposing of the campus are not retained at the campus, unless the commissioner or the commissioner's designee grants an exception, at the request of a school district, for:]~~

~~*[(i)* a teacher who provides instruction in a subject other than a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), who demonstrates to the commissioner satisfactory performance; or]~~

~~*[(ii)* a teacher who provides instruction in a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), if the district demonstrates that the students of the teacher demonstrated satisfactory performance or improved academic growth on that assessment instrument.]~~

~~[(3) If an educator is not retained under paragraph (2)(C) of this subsection, the educator may be assigned to another position in the district.]~~

~~[(e) Alternative management. The commissioner may order alternative management of a campus under this section and may require the campus to remain open, when:]~~

~~[(1) the commissioner does not approve repurposing of the campus under subsection (d) of this section and does not order the closure of the campus under §97.1051(3) of this title (relating to Definitions);]~~

~~[(2) the commissioner determines that alternative management has a reasonable expectation of producing an acceptable or higher campus performance rating in the state academic accountability system within three rating cycles of assignment of the alternative management service provider under §97.1067 of this title (relating to Alternative Management of Campuses);]~~

~~[(3) an alternative management service provider with the necessary skills and required expertise is available under §97.1069 of this title (relating to Providers of Alternative Campus Management); and]~~

~~[(4) such action is determined warranted under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) and other standards for accreditation sanction determinations.]~~

~~[(f) Closure. The commissioner may order closure of the campus when action is required under this section and:]~~

~~[(1) the commissioner approves neither repurposing of the campus under subsection (d) of this section nor alternative management under subsection (e) of this section;]~~

~~[(2) the district fails to enter into a contract for alternative management under §97.1067 of this title as required by §97.1067 of this title; or]~~

~~[(3) the commissioner does not approve the contract for alternative management under §97.1067 of this title; and]~~

~~[(4) such action is determined warranted under §97.1059 of this title and other standards for accreditation sanction determinations.]~~

~~[(g) Alternative management unsuccessful. The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:]~~

~~[(1) the district resumed operation of the campus under TEC, §39.107(n); and]~~

~~[(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating under the state academic accountability system.]~~

~~[(h) Appeal. An order proposing action under this section may be appealed only as provided by Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings).]~~

~~[(i) Waiver. The commissioner may waive the requirement to enter an order under subsection (a) of this section for not more than one school year if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be assigned an acceptable performance rating under the state academic accountability system for the following school year.]~~

(d) [~~(j)~~] Targeted technical assistance. In addition to the grounds specified in TEC, §39.109, if the commissioner determines that the basis for the unsatisfactory performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance, including, but not limited to, the district's regional education service center and/or an institution of higher education.

~~[(k) Lack of improvement. The commissioner shall order repurposing, alternative management, or campus closure under this section if the students enrolled at a campus assigned an unacceptable per-~~

~~formance rating under the state academic accountability system for two or more consecutive school years fail to demonstrate substantial improvement in the areas targeted by the campus' updated SIP and such order is needed to achieve the purposes listed in §97.1053 of this title. If the commissioner orders repurposing, alternative management, or campus closure under this subsection, a district may submit a request to the TEA to defer the sanction action to provide the commissioner an opportunity to review the academic progress of the campus during the school year subsequent to the performance rating leading to the order. If the commissioner grants a district's deferral request under this subsection and subsequently determines that a sanction will be ordered, the district may not appeal under TEC, §39.152, the final sanction order of the commissioner.]~~

§97.1066. Campus Closure.

(a) Closure ordered under §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers) will take effect at a date determined by the commissioner of education.

(b) A closed campus may still be used if the campus:

(1) serves a majority of grade levels not served at the original campus;

(2) serves a majority of students who did not attend that campus the previous year; and

(3) offers a distinctly different academic program.

(c) Any student assigned to the closed campus must be allowed to attend any other campus in the district.

(d) The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the district at which the students may enroll.

§97.1067. Alternative Management of Campuses.

(a) By January 1 of the school year for which alternative management of a campus is ordered under §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers) [~~(relating to Repurposing, Alternative Management, or Campus Closure)~~], the school district shall:

(1) execute a contract in compliance with this section; and

(2) relinquish control over the campus to a service provider approved under §97.1069 of this title (relating to Providers of Alternative Campus Management).

(b) A contract under this section must be executed by the district and the service provider and must:

(1) relinquish all authority to perform the duties and responsibilities of a principal under Texas Education Code (TEC), §11.202(b)(1)-(6), with respect to the campus;

(2) comply with TEC, §39.107(m)-(o); this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) provide for the creation, maintenance, retention, and transfer of all public records concerning the campus;

(4) include provisions governing liability for damages, costs, and other penalties for acts or omissions by the service provider, including failure to comply with federal or state laws;

(5) provide for termination of the contract if:

(A) the campus is assigned an acceptable or higher performance rating under the state academic accountability system for two consecutive school years; or

(B) the commissioner of education orders campus closure under §97.1065 [~~§97.1065(f) or (g)~~] of this title;

(6) specify additional roles or responsibilities assumed by the service provider, if any;

(7) be approved by written resolution of the district's board of trustees; and

(8) be approved in writing by the commissioner.

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) If a request is denied or a recommendation is not implemented by the district, the service provider shall report to the TEA both its request or recommendation and the district's action in response.

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39.108 and §39.107(n), as well as §97.1065(b) of this title.

(d) The funding for the campus must be not less than the funding of the other campuses operated by the district on a per-student basis so that the service provider receives at least as much funding as the campus would otherwise have received. The district must continue to support:

(1) campus maintenance and operations;

(2) transportation;

(3) food services;

(4) extracurricular activities;

(5) central office support services;

(6) state assessment administration; and

(7) similar operational expenses of the campus.

(e) A campus operated by a service provider under this section remains a campus of the district. Educators and staff assigned to work at the campus are district employees for all purposes. The campus is not subject to TEC, §11.253.

(f) The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39.107(n); and

(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating under the state academic accountability system.

(g) [~~(f)~~] A district subject to this section shall comply fully with TEA requests for information for the purpose of evaluating implementation of the contract, student performance, and management of the campus.

(h) [~~(g)~~] A district that violates the terms of its contract under this section is subject to further sanctions 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.

Filed with the Office of the Secretary of State on April 18, 2016.

TRD-201601843
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §§97.1061, 97.1063, 97.1064

STATUTORY AUTHORITY. The repeals are proposed under the Texas Education Code (TEC), §39.052, which requires an annual evaluation of the accreditation status of each school district. This section specifically safeguards diplomas, course credit, and grade promotions granted prior to the revocation by the commissioner; TEC, §39.056, which authorizes the agency to conduct monitoring reviews or investigations in accordance with requirements of the statutory provisions; TEC, §39.104, which applies interventions and sanctions imposed by TEC, Chapter 39, on school districts and campuses to open-enrollment charters. The section authorizes the commissioner to adopt rules to apply the interventions; TEC, §39.106, which requires the placement of a campus intervention team by the commissioner when a campus's performance fails to meet standards established under TEC, §39.054(e). This section also describes the duties, public notice, guidelines for a needs assessment to be done by a campus intervention team, and required areas of recommendations. This statute allows the commissioner to authorize some substitutions of certain committees and plans. The statute requires a board of trustees to take certain actions such as conducting a public hearing and submitting the plans to the commissioner; TEC, §39.107, which prescribes certain actions that must occur when a campus has consecutive years of unacceptable performance. The statute requires the development of a turnaround plan for two consecutive years of poor performance, requires public notice and input in developing the turnaround plan, details certain requirements of the turnaround plan, and authorizes the commissioner to adopt rules governing procedures for application to charters. The statute also prohibits the approval of a campus turnaround plan unless the commissioner determines the plan will achieve acceptable performance within two years of implementation and authorizes a district to implement a turnaround plan (or modified version) even if subsequent performance removes the requirement to implement the plan. TEC, §39.107, authorizes the commissioner to adopt rules necessary to implement the section; TEC, §39.109, which authorizes the commissioner to require a district or campus to select or be assigned professional services at their expense. This requirement is in addition to other interventions and sanctions authorized by statute. The statute authorizes additional requirements by the commissioner with regard to professional services; and TEC, §39.112, which describes the duties and responsibilities of a board of managers. This statute includes a requirement for the commissioner to, if possible, appoint certain types of individuals to a board of managers.

CROSS REFERENCE TO STATUTE. The repeals implement the TEC, §§39.052, 39.056, 39.104, 39.106, 39.107, 39.109, and 39.112.

§97.1061. Interventions and Sanctions for Campuses.

§97.1063. Campus Intervention Team.

§97.1064. Reconstitution.

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 April 18, 2016.

TRD-201601842
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 101. ASSESSMENT
SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING DIAGNOSTIC ASSESSMENT

19 TAC §101.6001

The Texas Education Agency proposes an amendment to §101.6001, concerning Texas middle school diagnostic reading assessment. The section implements the statutory requirement that each school district administer a diagnostic reading instrument at the beginning of Grade 7 to each student who did not demonstrate proficiency on the Grade 6 statewide reading assessment. The proposed amendment would eliminate references to statewide assessments that no longer exist.

The Texas Education Code, §28.006, requires the commissioner to adopt a list of diagnostic reading instruments for use by districts with Grade 7 students who failed to meet passing standards on the Grade 6 statewide reading assessment. To implement the statute, 19 TAC §101.6001 was adopted effective October 14, 2008, and reflected the statewide assessment program in place at that time. The proposed amendment would eliminate references to a specific assessment program and to specific assessments.

Additionally, the proposed amendment would clarify requirements for a district that wishes to choose an assessment other than one on the commissioner's approved list.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be ensuring the rule language does not reflect discontinued assessment programs. There are no additional costs to individuals required to comply with the proposed amendment, and the proposed amendment will have no effect on local employment or local economy.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore,

no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins April 29, 2016, and ends May 31, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* 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 April 29, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §28.006, which requires the commissioner to adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension and recommendations regarding the use of the instruments.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §28.006.

§101.6001. Texas Middle School Diagnostic Reading Assessment.

(a) Each school district shall administer during the first six weeks of the school year the diagnostic reading instrument specified in subsection (c) of this section to each student in Grade 7 whose performance on the Grade 6 statewide reading assessment [~~Texas Assessment of Knowledge and Skills (TAKS) or TAKS-Accommodated in reading~~] did not meet the passing standard. The admission, review, and dismissal committee or the Section 504 committee for each student who was administered an alternate form of the state assessment [~~the TAKS-Modified~~] in reading may determine if the diagnostic assessment is appropriate for use with that student.

(b) A student in Grade 7 who does not have a score for the statewide reading assessment in Grade 6 may be given an equivalent comprehension assessment. If that student does not meet the passing standard, then the student must be administered the diagnostic reading assessment specified in subsection (c) of this section.

(c) A school district must use the Texas Middle School Fluency Assessment and/or an alternate diagnostic reading instrument approved by the Texas Education Agency (TEA). A district may [~~must~~] submit to the TEA an alternate diagnostic reading instrument for approval [~~if it meets the criteria in subsection (d) of this section~~].

(d) An alternate diagnostic reading instrument must:

(1) be based on published scientific research in reading;

(2) be age and grade-level appropriate, valid, and reliable;

(3) identify specific skill difficulties in word analysis, fluency, and comprehension; and

(4) assist the teacher in making individualized instructional decisions based on the assessment results.

(e) A school district shall provide additional reading instruction and intervention to each student in Grade 7 who did not meet the passing standard on the Grade 6 state assessment in reading as appropriate to improve the student's reading skills in the areas of need identified by the diagnostic reading assessment.

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 April 18, 2016.

TRD-201601840
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §7.209

The Texas Department of Insurance proposes amendments to 28 TAC §7.209, concerning the Form A statement, the statement regarding the acquisition or change of control of a domestic insurer. The proposed amendments are necessary to clarify that information submitted to TDI as part of the Form A statement that is required by statute is subject to public inspection while information not required by statute that is requested by TDI to evaluate enterprise risk to the insurer is confidential.

EXPLANATION. TDI amended the holding company rules in May of 2013, to implement statutory changes to the Holding Company Systems Act, Insurance Code Chapter 823, by SB 1431, 82nd Legislature, Regular Session (2011), and to adopt rules consistent with the updated National Association of Insurance Commissioners (NAIC) model regulations. The intent of the statutory amendments was to strengthen TDI's regulatory tools to evaluate enterprise risk that may develop in insurance holding company systems. The statutory amendments improved TDI's access to information about the financial condition of insurance holding company systems in response to the nation's recent financial crisis and enhanced TDI's ability to protect the interests of the public and the state.

The proposed amendments are meant to clarify that sensitive, proprietary, or confidential supplemental information not required by the acquisition statutes but instead requested by the commissioner under Insurance Code §823.201(e) to evaluate enterprise risk to the insurer is not part of the Form A statement. Information provided in response to a request under Insurance Code §823.201(e) is separate from the Form A statement and is confidential under Insurance Code §823.011 and cannot be disclosed to the public except as provided for in Insurance Code §823.011. These changes do not affect information required by the acquisition statutes and filed with TDI as part of the Form A statement, which is subject to public inspection under Insurance Code §823.154(c). Headings, certifications, and other information not required by the acquisition statutes that are not sensitive, proprietary, or confidential by nature will remain in the Form A statement.

The amendments to §7.209 are proposed to maintain confidentiality of enterprise risk information that is not required by the

acquisition statutes as part of the acquisition process. These amendments will give TDI the regulatory tools necessary to assess acquisitions and protect insurance consumers without comprising the confidential information of applicants.

TDI proposes amendments to subsection (a) to address the separation of information an applicant must submit as part of the Form A statement from supplemental information an applicant must submit for TDI to evaluate enterprise risk to the insurer. As amended, only information required under subsections (b) - (p), including information concerning divestiture of control, is required as part of the Form A statement and subject to public inspection. Supplemental information required under proposed new subsections (r) - (z), which is required to evaluate enterprise risk to the insurer, is confidential and not part of the Form A statement. Also, an additional amendment to subsection (a) provides notice that an applicant may submit its application and supplemental information on a form made available by the department.

TDI proposes to delete Figure: 28 TAC §7.209(a) and Figure: 28 TAC §7.209(o), and replace the content of those figures with text in (b)(1) and (o)(1) respectively.

TDI proposes amendments to subsections (c)(2) and (3); (d); (e)(1) and (2); (f)(1); (g); (m)(1), (2), and (4); and (o)(3) and (4), and deletion of subsections (f)(2) and (4) and (m)(3)(B) and (5) to separate requirements regarding submission of sensitive, proprietary, or confidential information not required by the acquisition statutes from the information an applicant must submit as part of the Form A statement. Requirements addressing submission of this information are deleted from these provisions and incorporated into new subsections (r)(1) and (2); (s)(1) and (2); (t)(1) and (2); (u)(1) - (3), (v); (w)(1) - (5); (y)(1) and (2); and (z), which provide for applicant submission of information to evaluate enterprise risk to the insurer.

TDI proposes amendments to subsection (d) and new subsection (s)(1) to clarify that both direct and indirect owners of 10 percent or more of the voting securities of an applicant must furnish information requested under Insurance Code §823.201(b).

TDI proposes amendments to subsection (e)(3) to renumber it as (e)(2) and add language to clarify that the applicant must specifically request that the identity of the lender be kept confidential and not include the identity of the lender with the information required by the section.

TDI proposes an amendment to delete subsection (f)(3) because this provision addresses determining whether a domestic insurer complies with 28 TAC Chapter 22, but this information is not necessary to assess an acquisition.

TDI proposes an amendment to delete language in subsection (i) that requires an applicant to identify persons with whom voting contracts, arrangements, or understandings have been made.

TDI proposes an amendment to subsection (m)(2) to allow an applicant to submit statements already filed with TDI, NAIC, or another regulatory agency that easily can be accessed by electronic link as an alternative to submission of hard copy or electronic attachments.

TDI proposes amendments to delete the current subsection (m)(5), which contains language stating that certain annual reports are not part of the required material submitted to TDI, but are subject to public inspection during the pendency of the application, because the reports are confidential as requested to evaluate enterprise risk.

TDI proposes amendments to subsection (o)(1) to delete the request for email addresses, because email addresses for members of the public communicating electronically with a government agency are confidential under Government Code §552.137 and not subject to public inspection.

TDI proposes an amendment to subsection (o)(4) to add a provision stating that supplemental information concerning divestitures under subsection (y) is required to evaluate enterprise risk to the insurer and must be submitted separately.

TDI proposes an amendment to subsection (p) and language in new subsection (z) to add an exception for alien applicants, which must submit a certification acceptable in their jurisdiction.

TDI proposes new subsection (q) to reflect that information required to evaluate enterprise risk to the insurer under subsections (r) - (z) is confidential and not part of the Form A statement.

TDI proposes provisions in new subsections (r)(2), (s), and (w)(1) and (2) to add requirements for the submission of the ultimate controlling person's organizational chart, biographical data, fingerprints, and financial projections and statements, respectively, and to clarify that an affiliate or owner of 10 percent or more of the voting securities includes the ultimate controlling person.

TDI proposes provisions in new subsection (s)(2) to add requirements that the applicant and other persons listed in the subsection provide an independent third party background investigation report from a list of vendors furnished by the NAIC or as acceptable to the commissioner. The report gives TDI more data to make an informed decision about the applicant and other persons in addition to fingerprinting. A current version of the report is necessary because there is no system in place to verify an event subsequent to the date of the report.

TDI proposes new subsection (u)(2) to add a requirement that the applicant must describe its business plans for the insurer and the ultimate controlling person's business plans for the holding company system; increase the length of time from 24 months, as required by subsection (f)(2) of the current rule, to three years or time of debt service to be consistent with the financial statement requirement; allow the applicant to file its business plan on the NAIC Uniform Certificate of Authority Application; and replace the word "increase" with "change" to clarify any change in capital or surplus.

TDI proposes a provision in new subsection (w)(1) to clarify that financial projections are not required for individuals, and the commissioner may provide for a lesser time requirement for publicly-traded companies.

TDI proposes a provision in new subsection (w)(2) to clarify that financial statements of the ultimate controlling person are only confidential if the person is not a publicly-traded company.

TDI proposes new subsection (x) to add a requirement that the applicant describe the applicant and ultimate controlling person's cybersecurity plans and the future cybersecurity plans for the insurer, to evaluate enterprise risk to the insurer.

TDI proposes new Figure: 28 TAC §7.209(z) to add a separate certification for the supplemental information submitted to the commissioner to evaluate enterprise risk to the insurer.

TDI proposes amendments to renumber subsections where appropriate. Finally, TDI proposes amendments that are nonsubstantive in nature to conform with TDI's writing style guides.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Doug Slape, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. Mr. Slape does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Slape has also determined that for each year of the first five years the proposed amendments will be in effect, there will be public benefits resulting from the proposal. The public benefit of the proposed amendments will be to foster robust disclosures to better protect the public, because acquiring parties will be more likely to provide confidential information that TDI can use to accurately assess acquisitions if they know that the information they provide to TDI to evaluate enterprise risk to the insurer will remain confidential. There is no anticipated costs to persons required to comply with this proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small or micro businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. This proposal does not have any economic impact on small or micro businesses, so no economic impact statement or regulatory flexibility analysis is required.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal, your written comments must be postmarked no later than 5 p.m., Central time, on May 31, 2016. Please send comments either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov. Please simultaneously submit an additional copy of the comments by mail to Mike Arendall, Financial Analysis, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or by email to Mike.Arendall@tdi.texas.gov. If you wish to request a public hearing on this proposal, you must submit a a separate request by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments to §7.209 are proposed under Insurance Code §§823.001(c)(2), 823.011(a)(1), 823.012(a), 823.154(a) and (c), 823.201(e), 823.205(b)(9), and 36.001.

Section 823.001(c)(2) provides that the purpose of Insurance Code Chapter 823 is to promote the public interest by requiring disclosure of pertinent information relating to and approval of changes in control of an insurer.

Section 823.011(a)(1) provides that confidentiality of information includes documents and copies of documents that are reported or otherwise provided under Insurance Code Chapter 823, Subchapter B or C; or §823.201(d) or (e).

Section 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Section 823.154(a) provides that before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer, the acquiring person must file with the commissioner a statement that satisfies the requirements of Insurance Code Chapter 823, Subchapter E; the acquisition or divestiture of control must be approved by the commissioner in accordance with Insurance Code Chapter 823, Subchapter D; and if a person is initiating a divestiture of control, the divesting person must file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule.

Section 823.154(c) provides that a statement or notice filed under the section must be filed not later than the 60th day before the proposed effective date of the acquisition or change of control or divestiture and is subject to public inspection at the office of the commissioner.

Section 823.201(e) provides that the acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system must provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

Section 823.205(b)(9) provides that a statement required under Insurance Code §823.154 must contain any additional information the commissioner by rule prescribes as necessary or appropriate to protect policyholders of the insurer whose voting securities are to be acquired, or the public.

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

CROSS REFERENCE TO STATUTE. The proposed amendments to §7.209 affect the following statutes: Insurance Code §§823.001(c)(2), 823.011(a)(1), 823.012(a), 823.154(a) and (c), 823.201(e), and 823.205(b)(9).

§7.209. Form A.

(a) Statement regarding the acquisition or change of control of a domestic insurer. Submit information concerning the acquisition or change of control of a domestic insurer as specified in subsections (b) -

(n) and (p) of this section. Provide the information required in subsections (o) and (p) of this section for a divestiture of control. Separately submit supplemental information, necessary to evaluate the enterprise risk to the insurer under Insurance Code §823.201(e), as specified in subsections (r) - (z) of this section. An applicant may submit its application and supplemental information on a form made available by the department.
[~~Figure: 28 TAC §7.209(a)~~]

(b) Insurers and method of acquisition.

(1) State the name of the acquiring person (applicant), the date the application is filed, and the name, title, address, and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

(c) Identity and background of the applicant.

(1) State the name and address of the applicant seeking to acquire control over the insurer.

(2) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as the person and any predecessors have been in existence and fully describe any business the person intends [~~and any of its affiliates intend~~] to commence.

[~~(3) Furnish a chart or listing clearly identifying the interrelationships between the applicant and all affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.~~]

(d) Identity and background of individuals associated with the applicant.

[~~(1)~~] Furnish only the information requested under Insurance Code §823.201(b) [~~biographical data~~] for the applicant if the person is an individual, or for all persons who are directors, executive officers, or direct or indirect owners of 10 percent or more of the voting securities of the applicant if the applicant is not an individual[~~, with the biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings)~~].

[~~(2) The applicant if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, must comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct)~~].

(e) Nature, source, and amount of funds or other consideration.

(1) Describe the nature, source, and amount of funds or other consideration used or to be used in effecting the merger or other acquisition of control. If any part is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties, the relationship, if any, between the borrower and the lender, and the amounts borrowed or to be borrowed[~~, and copies of all agreements, promissory notes, and security arrangements~~].

[~~(2) Explain the criteria used in determining the nature and amount of the consideration.~~]

(2) [~~(3)~~] If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, the applicant [~~he or she~~] must specifically request that the identity of the lender be kept confidential and not include the identity of the lender with the information required by this section.

(f) Future plans for insurer.

(1) Describe [~~Provide a business plan which describes~~] any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay dividends or make other distributions, liquidate the insurer, sell any of its assets, merge or consolidate it with any person or persons, make any other material change in its business operations or corporate structure or management, or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party[~~, and describe any financial or employment guarantees given to present and contemplated management~~].

[~~(2) Describe applicant's operational plans for the domestic insurer covering the succeeding 24 months, including, but not limited to, change of location, change of name, increase in capital and/or surplus, reinsurance activity, type of business to be written, and anticipated premium volume.~~]

[~~(3) Provide:~~]

[~~(A) an affirmative statement of applicant's and the domestic insurer's compliance with Chapter 22 of this title (relating to Privacy); and~~]

[~~(B) if applicant proposes revisions to the domestic insurer's current privacy policy, the proposed revised privacy policy along with any revised notices required under §22.12 of this title (relating to Revised Privacy Notices) and any other notices or authorization requests and forms applicant will be required to provide to maintain compliance with Chapter 22 of this title.~~]

[~~(4) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.~~]

(2) [~~(5)~~] Describe any other arrangement or agreement, oral or written, entered into by any acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months.

(g) Voting securities to be acquired. State the number of shares of the insurer's voting securities and the amount or number of shares convertible into voting securities which the applicant, its affiliates, and any person listed in subsection (d) of this section plan to acquire, and

the terms of the offer, request, invitation, agreement, or acquisition[~~, and a statement of the method by which the fairness of the proposal was determined~~].

(h) Ownership of voting securities. State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in subsection (d) of this section.

(i) Contracts, arrangements, or understandings with respect to voting securities of the insurer. Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any persons listed in subsection (d) of this section is involved, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies. [~~The description must identify the persons with whom the contracts, arrangements, or understandings have been made.~~]

(j) Recent purchases of voting securities. Describe any purchases of any voting securities of the insurer by the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement. Include in the description the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid. State whether any shares so purchased are hypothecated.

(k) Recent recommendations to purchase. Provide a copy of any written, or a confirmed description of any oral, recommendations to purchase any voting security of the insurer made by the applicant, any of its affiliates, or any person listed in subsection (d) of this section, or by anyone based on interviews with or at the suggestion of the applicant, any of its affiliates, or any person listed in subsection (d) of this section during the 12 calendar months preceding the filing of this statement.

(l) Agreements with broker-dealers. Provide a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities of the insurer for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers.

(m) Financial statements and exhibits.

(1) Under [~~Financial statements, exhibits, and financial projections of the insurer and the applicant must be attached to this statement as an appendix, but list under~~] this subsection provide only a list of the financial statements, financial projections, and exhibits submitted under subsection (w) of this section. [~~so attached. Projections of the domestic insurer and the applicant must be for a period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control and any additional document or papers required by regulation.~~].

(2) The financial statements must include the annual financial statements of the applicant [~~persons identified in subsection (c)(3) of this section~~] for the preceding three fiscal years (or for such lesser period as the applicant [~~and its affiliates~~] and any predecessors have been in existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the applicant that the unaudited financial statement is true and correct, as of its date, and that there has been no material change in financial condition, as defined by the Act, from the date of the financial statement to the date of the affidavit or certification. The statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if the consolidated statements are prepared in the usual course of business. A link to where the information is located can be provided as an alternative to hard copy or electronic attachments with the Form A. This only pertains to files that already have been filed with the department, the National Association of Insurance Commissioners, or another regulatory agency that easily can be accessed electronically.

(3) Unless exempted by the commissioner, the annual financial statements of the applicant must be made in accord with generally accepted auditing standards and accompanied by the certificate of an independent certified public accountant that the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the certificate is not available, then the financial statement must be sworn to by the applicant as correctly reflecting its financial condition, and in that case, the commissioner at the commissioner's discretion may require the financial statement to be certified by an independent public accountant.

(4) [~~(A)~~] If the applicant is an insurer which is actively engaged in the business of insurance and licensed to do business in this state, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and which are in accord with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state.

[~~(B) If the applicant is an individual person, the person must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that he or she is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles and must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.~~]

(5) [~~(4)~~] File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material[~~; and proposed employment, consultation, advisory, or management contracts concerning the insurer~~].

[~~(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title (relating to Acquisition or Divestiture Statements--Filing Requirements) must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years. These reports are for review of the department, and are not a part of the material required to be submitted under the Act. However, the materials will be open for public inspection at the offices of the department during the pendency of the application.~~]

(n) Enterprise risk management. Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F under Insurance Code §823.0595, as applicable, within 15 days after the end of the month in which the acquisition of control occurs.

(o) Notice regarding *divestiture of control* [~~divestiture of control~~] under Insurance Code §823.154.
[~~Figure: 28 TAC §7.209(o)~~]

(1) Provide the name of the domestic insurer and divesting person (applicant), the date the application is filed, and the name, ti-

tle, address, [~~email,~~] and telephone number of the individual to whom notices and correspondence concerning this statement should be addressed.

(2) Provide notice that applicant is divesting control of the above named insurance companies [~~company(ies)~~] and describe how control is being divested and include the percentage of control being divested.

[~~(3) State the name and address of the recipient(s) of the divestiture of control.~~]

[~~(4) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.~~]

(3) [~~(5)~~] Describe and state the name of the person in control of the insurer before and after the divestiture of control.

(4) Supplemental information required under Insurance Code §823.201(e) to evaluate the enterprise risk to the insurer must be submitted separately under subsection (y) of this section.

(p) Signature and certification. Signature and certification of the Form A in the following form, except for alien applicants, which must submit a certification acceptable in their jurisdiction:
Figure: 28 TAC §7.209(p)

(q) *Supplemental information* to evaluate enterprise risk. Separately submit supplemental information, necessary to evaluate the enterprise risk to the insurer under Insurance Code §823.201(e), as specified in subsections (r) - (z) of this section, which is confidential under Insurance Code §823.011.

(r) Identity and background of the applicant to evaluate enterprise risk.

(1) Fully describe any business that affiliates of the applicant intend to commence.

(2) Furnish a chart or listing clearly identifying the interrelationships between the ultimate controlling party, applicant, and all other affiliates of the applicant. Indicate in the chart or listing the percentage of voting securities of each person controlled by the applicant or by any other person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of control. As to each person specified in the chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings looking toward a reorganization or liquidation are pending with respect to any person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

(s) Identity and background of individuals associated with the applicant to evaluate enterprise risk.

(1) Provide biographical data of the applicant if the person is an individual, or for all persons who are directors, executive officers, or direct or indirect owners of 10 percent or more of the voting securities of the ultimate controlling person and applicant if the ultimate controlling person or applicant is not an individual, in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(2) The applicant, if the person is an individual, or for persons who are the chair of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the ultimate controlling person and applicant if the ultimate controlling person and applicant are not individuals, must comply with the fingerprint requirements of Chapter 1, Subchapter D of this title, and provide an independent third party background investigation report from a list of vendors furnished by the National Association of Insurance Commissioners or as acceptable to the commissioner.

(t) Nature, source, and amount of funds or other consideration to evaluate enterprise risk.

(1) Provide copies of all agreements, promissory notes, and security arrangements as described in subsection (e)(1) of this section.

(2) Explain the criteria used in determining the nature and amount of the consideration.

(u) Future plans for insurer to evaluate enterprise risk.

(1) Describe any financial or employment guarantees given to present and contemplated management as part of the plans or proposals submitted under subsection (f)(1) of this section.

(2) Describe applicant's business plans for the domestic insurer and the ultimate controlling person's business plans for the holding company system covering the period equal to the greater of three years or the length of time of debt service required by applicant in its acquisition of control including, but not limited to, change of location, change of name, change in capital or surplus, reinsurance activity, type of business to be written, and anticipated premium volume. Applicant may provide the business plan on the National Association of Insurance Commissioners Uniform Certificate of Authority Application.

(3) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including, but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each position, evidence of the individual's ability and experience to perform same by providing biographical data in the form of the latest version of the biographical affidavit form published by and available from the National Association of Insurance Commissioners and adopted by reference under §7.201(a)(1) of this title.

(v) Voting securities to be acquired. Provide a statement of the method by which the fairness of the proposal to acquire the voting securities was determined under subsection (g) of this section to evaluate enterprise risk.

(w) Financial statements and exhibits to evaluate enterprise risk.

(1) Provide the financial projections for the ultimate controlling person, applicant, and domestic insurer for a period equal to the greater of three years or the length of time of debt service required by the applicant in its acquisition of control and any additional document or papers required by regulation, except that financial projections are not required for individuals and the commissioner may provide for a lesser period for publicly-traded companies.

(2) Provide the financial statements of the ultimate controlling person if the ultimate controlling person is not a publicly-traded company. The financial statements of the ultimate controlling person of the applicant as described in subsection (m)(2) and (3) of this section must include their annual financial statements.

(3) Unless exempted by the commissioner, if the applicant is an individual person, the applicant must provide a reviewed financial statement accompanied by the certificate of an independent public accountant that the accountant is not aware of any material modifications that should be made to the accompanying financial statement for it to be in conformity with generally accepted accounting principles. Appli-

cant must provide a balance sheet as of a date not earlier than 120 days prior to the filing of the statement and balance sheets for the second and third fiscal years preceding the filing of the statement accompanied by affidavit or certification that each balance sheet is true and correct as of its date.

(4) File as exhibits copies of all proposed employment, consultation, advisory, or management contracts concerning the insurer.

(5) In addition to the other material required to be filed by this section, a person described in §7.205(a) of this title must file, as an exhibit, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years.

(x) Cybersecurity information to evaluate enterprise risk. Describe the cybersecurity plan, including systems, policies and procedures, reviews, incident responses, trainings, and strategies of the ultimate controlling person and applicant, and future cybersecurity plans for the insurer.

(y) Notice regarding *divestiture of control* to evaluate enterprise risk.

(1) State the name and address of the recipient(s) of the divestiture of control.

(2) Provide copies of any sales contracts and an organizational chart before and after the divestiture of control.

(z) Signature and certification. Signature and certification of the supplemental information in the following form, except for alien applicants, which must submit a certification acceptable in their jurisdiction:
Figure: 28 TAC §7.209(z)

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 May 12, 2016.

TRD-201601708
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: May 29, 2016
For further information, please call: (512) 676-6584

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 155. REPORTS AND INFORMATION GATHERING

SUBCHAPTER D. VENDOR PROTEST PROCEDURES

37 TAC §155.41

The Texas Board of Criminal Justice proposes amendments to §155.41, concerning Procedures for Resolving Vendor Protests.

The amendments are proposed in conjunction with a proposed rule review of §155.41 as published in another section of the *Texas Register.* The proposed amendments are necessary to update formatting.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to update the existing rule.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *Sharon.Howell@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, §2155.076.

Cross Reference to Statutes: None.

§155.41. Procedures for Resolving Vendor Protests.

(a) Purpose. The purpose of this rule is to provide a protest procedure to be used by an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the Texas Department of Criminal Justice (TDCJ [~~or agency~~]).

(b) Definitions. The words and terms used in this rule shall have the following meanings unless the context clearly indicates otherwise:

(1) "Interested Parties" are all vendors who have submitted bids, proposals, or other expressions of interest for the provision of goods or services pursuant to a contract with the TDCJ.

(2) "Protesting Party" is any actual or prospective bidder, offeror, or contractor who claims to be aggrieved in connection with the solicitation, evaluation, or award of a contract by the TDCJ.

(c) Formal Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the TDCJ [~~agency~~] may formally protest to the director of the Contracts and Procurement Department (director).

(1) A formal protest must be made in writing and received by the director within 10 business [~~working~~] days after the protesting party knows, or should have known, of the occurrence of the action that is protested. A formal protest shall conform to the requirements of subsections (c) - (e) of this rule, and the protest and any subsequent appeal shall be resolved through use of the procedures that are described in subsections (f) - (h) of this rule.

(2) The protesting party must mail or deliver a copy of the formal protest to all other interested parties. Upon request, the TDCJ [~~agency~~] shall furnish to the protesting party a list of interested parties, as reflected in the records of the TDCJ's [~~agency's~~] Contracts and Procurement Department.

(d) Formal Protest Requirements. A formal protest submitted by a protesting party must be sworn to and contain the following:

(1) A specific identification of the statutory, regulatory, or other provision(s) the protesting party alleges has been violated;

(2) A specific description of each action by the TDCJ [~~agency~~] the protesting party alleges to be a violation of the statutory or regulatory provision(s) the protesting party has identified pursuant to section [~~paragraph~~] (1) of this subsection;

(3) A precise statement of the relevant facts;

(4) Identification of the issue or issues to be resolved;

(5) The arguments and authorities that support the protest;

(6) A statement that a copy of the protest has been mailed or delivered to all other interested parties; and

(7) A copy of the letter the protesting party has sent to all other interested parties and the names and addresses of the specific persons to whom the letters were sent.

(e) Timeliness of Formal Protest.

(1) In the event of a timely formal protest under this rule, the TDCJ [~~agency~~] shall not proceed further with the solicitation or award of the contract being protested unless the chief financial officer [~~Chief Financial Officer~~] (CFO), after consultation with the director, makes a written determination that to protect the best interests of the TDCJ [~~agency~~], the contract must be awarded without delay.

(2) A protest or an appeal that is filed untimely [~~filed~~] shall not be considered unless the CFO determines that good cause for delay is shown or that a protest or an appeal raises issues that are significant to TDCJ [~~agency~~] procurement practices or procedures in general.

(f) Director's Authority to Settle the Protest.

(1) If a conflict of interest exists with the director or the CFO, the duties of the director or the CFO shall transfer to the deputy executive director [~~Deputy Executive Director~~].

(2) The director shall have the authority to settle and resolve the protest concerning the solicitation, evaluation, or award of a contract [~~at any time before the matter is appealed to the CFO~~]. The director may solicit written responses to the protest from other interested parties.

(3) If the protest is not resolved through mutual agreement, the director shall issue a written determination responding to the protest.

(A) If the director determines no material violation of statutory or regulatory provisions has occurred, the director shall notify the protesting party and all other interested parties by sending a letter explaining the reasons for the determination.

(B) If the director determines a material violation of statutory or regulatory provisions has occurred in a situation in which a contract has not yet been awarded, the director shall notify the protesting party and all other interested parties by sending a letter explaining the reasons for the determination and the appropriate remedy.

(C) If the director determines a material violation of any statutory or regulatory provisions has occurred in a situation in which a contract has already been awarded, the director shall notify the protesting party and all other interested parties by sending a letter that explains the reasons for the determination. This letter may include an order declaring the existing contract void.

(g) Appeal. A protesting party who is not satisfied with the director's determination of a protest may appeal the determination to the CFO.

(1) An appeal of the director's determination must be in writing and received in the CFO's office no [~~not~~] later than 10 business days after the date on which the director sent written notice of the determination. The scope of the protesting party's appeal shall be limited to a review of the director's determination.

(2) The protesting party must mail or deliver a copy of the appeal to all other interested parties.

(3) The appeal must contain the following:

(A) A statement that a copy of the appeal has been mailed or delivered to all other interested parties; and

(B) A copy of the letter the protesting party has sent to all other interested parties and the names and addresses of the specific persons to whom the letters were sent.

(h) CFO's Determination of the Appeal.

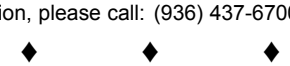
(1) The CFO may consider any documents TDCJ [~~agency~~] staff or any interested party has submitted.

(2) The CFO's determination of the appeal shall be final. The CFO shall issue a written letter of determination to the protesting party and all other interested parties.

(3) A written determination issued by the CFO shall be the final administrative action of the TDCJ [~~agency~~] concerning a formal protest.

(i) The Contracts and Procurement Department shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the TDCJ *Records* [~~agency's *Record*~~] *Retention Schedule.*

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 April 18, 2016.

TRD-201601828
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 29, 2016
For further information, please call: (936) 437-6700