

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 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.27

1. Introduction: The State Preservation Board (SPB) proposes the amendment of 13 TAC §111.27(b)(2), concerning General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds. Section 111.27 is being amended to change the terminology from "seeing eye" dogs to "service" dogs.

The SPB proposes the amendment in response to SB 2333, 88 Reg. which changes the language in Texas Government Code §443.018(b) and requires the same change to the Texas Administrative Code.

2. Fiscal Note: Ms. Cindy Provine, Chief Financial Officer, has determined for each year of the first five years the proposed amendment is in effect, there will be no adverse fiscal impact to state or local governments because of this proposal. There will be no measurable effect on local employment or the local economy because of the proposal. Therefore, a local employment impact statement under Government Code §2001.022 is not required.

3. Public Benefit/Cost Note: Ms. Provine has also determined that for each year of the first five years the proposed amendment is in effect, there is no change to public benefit. She has further determined that there will be no economic cost to any member of the public or any other public or private entity.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total costs imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the SPB has determined that the proposed amendment will not impose any cost on anyone, and so §2001.0045 does not apply.

4. Government Growth Impact Statement: Government Code §2001.0221 requires that a state agency prepare a government growth impact statement that reasonably describes what effects a proposed rule may have during the first five years it is in effect. The SPB has determined that the proposed amendment will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the agency. Implementation of the proposal will not require the creation or elimination of employee positions and will not require an increase or decrease

in further legislative appropriations to the agency. The proposal does repeal an existing procedural rule regarding voluntary conduct, but it does not create a new prescriptive or proscriptive regulation, or expand, limit, or repeal such a regulation. Though the public's ability to seek to display exhibits in the Capitol through this program will be eliminated, the regulation was not prescriptive. Thus, the number of individuals whose conduct is subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

5. Economic Impact Statement and Regulatory Flexibility Analysis: The SPB has determined the proposed rule amendment will not have an economic effect on small businesses, micro businesses, or rural communities. Therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002(c).

6. Takings impact assessment: The SPB has determined that this proposal affects no private real property interests and does not restrict or limit an owner's right to property that would exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

7. Request for Public Comment: To comment on the proposal, submit written comments by 5:00 p.m. (Central) on May 6, 2024, to spbadmin@tspb.texas.gov. Please add the words Rule Comments in the subject line. A request for public hearing must be in writing and sent separately from any written comments. Send these requests to spbadmin@tspb.texas.gov.

8. Statutory Authority: This action is requested under Texas Government Code §443.007(b), which authorizes the SPB to adopt rules concerning certain buildings, their contents, and their grounds.

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

§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.

(a) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purpose are prohibited from:

(1) attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) setting up or placing camping equipment, shelter, tents, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board for special events;

- (4) blocking ingress and egress:
- (A) into the Capitol; or
 - (B) into rooms or hallways within the Capitol, except as approved by the board;
- (5) conducting actions that pose a risk to safety;
- (6) smoking in the public areas of the Capitol and Capitol extension;
- (7) bringing balloons into the Capitol or Capitol extension; and
- (8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.
- (b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:
- (1) leave the Capitol when the building is closed to the public; and
 - (2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except service dogs [Seeing Eye dogs] are not permitted in the Capitol.
- (c) The board may require and collect a standardized fee from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities.
- (d) Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:
- (1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or
 - (2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.
- (e) The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group, or other entity.
- (f) For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.
- (g) TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

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 March 19, 2024.

TRD-202401214

Rod Welsh

Executive Director

State Preservation Board

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 463-4180

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.100

The Texas Department of Licensing and Regulation (Department) proposes an amendment to existing rules at 16 Texas Administrative Code (TAC), Chapter 70, §70.100(a), regarding the Industrialized Housing and Buildings program. This proposed change is referred to as the "proposed rule."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rule under 16 TAC, Chapter 70, implements Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

The proposed rule amendment at §70.100(a) would revise the date on which the industry would begin implementing the 2021 editions of the International Building Codes, the 2020 National Electrical Code, and their amendments. The proposed rule amends the date for industry implementation to July 1, 2024.

Code Council Recommendations

This rulemaking is solely for the revision of the date the industry is to begin implementation of the 2021 editions of the International Building Codes, the 2020 National Electrical Code, and their amendments. The agency has performed outreach to the industry and is not enforcing the date currently shown in the rule section. As the only amendment to the rules is the date of implementation and time is of the essence, it is not necessary to consult the Code Council.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §70.100(a) to revise the effective date of the mandatory building codes to July 1, 2024.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to

the state or local government as a result of enforcing or administering the proposed rule.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit of delaying the date for implementation will be the increased time the public and Industrialized Manufacturers and Builders will have to ensure compliance with the 2021 International Building Codes and the 2020 National Electrical Code and their amendments.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

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

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

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

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

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

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

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposed rule.

§70.100. *Mandatory Building Codes.*

(a) Effective July 1, 2024 [~~April 1, 2024~~], all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the codes referenced in subsection (c) - (j). The 2015 editions of the International codes as identified in subsection (c) - (i), as well as the 2014 edition of the *National Electrical Code* identified in subsection (j), shall remain in effect through June 30, 2024 [~~March 31, 2024~~]. All work permitted or started before July 1, 2024 [~~April 1, 2024~~], may be completed with the 2015 editions of the International codes and the 2014 edition of the *National Electrical Code*.

(b) - (k) (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 March 22, 2024.

TRD-202401257



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §§165.7 - 165.9

The Texas Medical Board (Board), TAC 22, proposes new §165.7, concerning Exceptions to Abortion Ban, §165.8, concerning Abortion Ban Exception Performance and Documentation, and §165.9, concerning Complaints Regarding Abortions Performed.

The new sections do not regulate or prohibit abortion but are promulgated to clarify the regulatory analysis to be utilized by the Board in the event that the agency receives a complaint and must determine what is, if any, an appropriate disciplinary action against a physician who violates other laws that regulate or prohibit abortion.

The rules reaffirm that when investigating a complaint regarding allegations of performing an abortion, the Board will investigate the complaint utilizing the standard processes that apply to every other complaint and investigation. This clarifying language is a direct result of recent litigation and requests from private individuals and groups.

The proposed new sections are as follows:

New §165.7, titled Definitions, describes the specific definitions for certain terms used in this section.

New §165.8, titled Abortion Ban Exception Performance and Documentation, explains that physicians need to comply with all applicable laws, rules and court opinions related to abortion and its exceptions in Texas. The rules also provide the minimum required information that must be included in the medical record.

New §165.9, titled Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to clarify the laws and minimum requirements the Board will utilize in regard to determining exceptions to the prohibition on abortions.

Mr. Freshour has also determined that for the first five-year period the proposed new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new sections and determined that for each year of the first five years the new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new sections will be in effect, there will be no effect on local economy and local employment.

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

(1) These proposed new sections do not create or eliminate a government program.

(2) Implementation of these proposed new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed new sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed new sections do not create new regulations.

(6) These proposed new sections do not repeal existing regulations. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to <https://forms.office.com/g/rS4ea217Ym>. A public hearing will be held at a later date.

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to perform its duties and enforce this subtitle.

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

§165.7. Definitions.

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

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy. This definition is found at Chapter 245, Section 245.002(1) of the Texas Health and Safety Code.

(2) "Ectopic pregnancy" means the implantation of a fertilized egg or embryo outside of the uterus and removing an ectopic pregnancy is not an abortion. This definition is found at Chapter 245, Section 245.002(4-a) of the Texas Health and Safety Code.

(3) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, Section 21.002(11-a) of the Texas Labor Code.

(4) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, Section 171.002(3) of the Texas Health and Safety Code.

(5) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, Section 170A.001(4) of the Texas Health and Safety Code.

§165.8. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must specifically document in the patient's medical record:

(1) that the abortion is performed in response to a medical emergency;

(A) that places the woman in danger of death unless the abortion is performed or induced; or

(B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;

(2) the major bodily function(s) at serious risk of substantial impairment;

(3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;

(4) how the danger of death or serious risk was determined;

(5) how the decision was made to proceed with an abortion based on reasonable medical judgement including:

(A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and

(B) what alternative treatments were attempted and failed or were ruled out;

(6) how the determination was made that performing a procedure in such a way as to give the child the best opportunity to survive would create a greater risk to the woman; and

(7) whether there was adequate time to transfer the patient, by any means available to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

§165.9. Complaints Regarding Abortions Performed.

(a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.

(b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in Texas Occupations Code, Section 154.0561, to review the available information, including the patient's medical record.

(c) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

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 March 25, 2024.

TRD-202401262

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 305-7016



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 147. DISPUTE RESOLUTION-AGREEMENTS, SETTLEMENTS, COMMUTATIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC

§147.4, concerning filing and effective dates for agreements in the dispute resolution process; §147.5, concerning settlements in the dispute resolution process; §147.7, concerning the effect on previously entered decisions and orders for agreements and settlements; §147.10, concerning the commutation of impairment income benefits; and 147.11, concerning notification to DWC of proposed judgments and settlements. DWC proposes to repeal §147.1, concerning definitions; §147.2, concerning the form of agreements and settlements; §147.3, concerning the execution of agreements and settlements; §147.6, concerning settlement conferences; §147.8, concerning the withdrawal from a settlement; and §147.9, concerning requirements for agreements and settlements. DWC proposes to adopt new §147.1, concerning the form and execution of agreements and settlements. Chapter 147 implements Texas Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258.

EXPLANATION. Amending Chapter 147 is necessary to organize the chapter and remove unnecessary rules to update and streamline the process. Some sections will be deleted because they repeat the Labor Code or require DWC to perform actions that are unnecessary and not required by statute. The amendments are also necessary to remove references to penalties specific to certain violations of agreements and settlements since penalties are addressed in Labor Code Chapter 415 and 28 TAC 180.

The amendments will also condense some sections into others so the chapter is more organized and easier to navigate; remove some sections and subsections that are outdated and unnecessary; update citations; remove obsolete references; and make plain language updates and agency style editorial changes.

Section 147.1 provides a statutory reference to definitions in the dispute resolution process. The repeal of §147.1 removes the reference to the definitions within the section, which are "agreement" and "settlement," because these definitions exist in Labor Code §401.011. Sections 147.2 and 147.3 will move into new §147.1, which will replace the repealed text, to better organize the chapter. Also, §147.1 will be renamed to better reflect its purpose.

Section 147.2 provides that agreements and settlements must be on a form prescribed by DWC and specifies which forms to use. DWC proposes repealing §147.2 and moving §147.2(a), which requires that an agreement or settlement of the dispute resolution process be on a form prescribed by DWC, to §147.1 to better organize the chapter. Subsections 147.2(b) and 147.2(c), which specify certain DWC forms to use, will be repealed because our website contains these forms, and the website is easy to navigate.

Section 147.3 concerns the execution of agreements and settlements in the dispute resolution process. The existing subsections under §147.3 will move to new §147.1 to better organize the rule, and §147.3 will be repealed.

Section 147.4 concerns filing agreements and effective dates in the dispute resolution process. The amendments remove certain procedures for DWC staff that are not required by statute and do not contribute to the purpose of filing agreements. The amendments also remove §147.4(e), which refers to possible penalties imposed if a breach of an agreement occurs, because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties. The amendments will also rename §147.4 to better reflect its purpose.

Section 147.5 concerns settlements in the dispute resolution process, including settlement requirements, effective dates, and procedures for informal settlement conferences. The amendments remove subsections 147.5(b), (c), (d), (e), and (g). Those provisions are more appropriate for internal procedures than a rule. Removing them will update and streamline the settlement process. Subsection 147.5(h) will be removed because it exists in Labor Code §408.005(f). Section 147.9(c) regarding settlements will move to new §147.5(c). The amendments will also rename §147.5 to better reflect its purpose.

Section 147.6 provides that DWC may reject a settlement by an unrepresented employee pending an informal conference. DWC is repealing §147.6 because it is obsolete. Settlements under old law are now covered under Chapter 56 of this title (relating to Structured Compromised Settlement Agreements).

Section 147.7 concerns the effect on previously entered decisions and orders for agreements and settlements in the dispute resolution process. The amendments will rename §147.7 to better reflect its purpose.

Section 147.8 provides the circumstances under which a party can withdraw from a settlement. Section 147.8 will be removed because it repeats Labor Code §408.005(h).

Section 147.9 concerns the requirements for agreements and settlements in the dispute resolution process. Repealing §147.9 will remove subsections (a) and (b) because they repeat the statute. Section 147.9(c) regarding settlements will be moved to §147.5(c) to better organize the rule.

Section 147.10 concerns the commutation of impairment income benefits. The amendments to §147.10 will remove subsection (a) because it exists in Labor Code §408.128. Subsection (c) will be removed because the DWC form already provides a warning to the employee that commutation terminates the employee's entitlement to additional income benefits, and it exists in Labor Code §408.128. Subsection (d) will be removed because it is unnecessary. Subsection (d) states that the employee may contact DWC to get or verify the information required to be included in a request to commute impairment benefits. Employees may contact DWC to get or verify this information without a rule stating so. Therefore, it is unnecessary. The amendments also rename the section to better reflect its purpose.

Section 147.11 concerns notifications to DWC of proposed judgments and settlements within the dispute resolution process. The amendments to §147.11 update the language in subsection (b) and remove subsections (a) and (c) because they exist in Labor Code §410.258. The amendments also remove subsection (d) regarding penalties because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties.

In addition, the proposed amendments to Chapter 147 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments and repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments and repeals do not add to or decrease state revenues or expenditures, and because local gov-

ernments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Craddock does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and repeals are in effect, Deputy Commissioner Craddock expects that enforcing and administering the proposed amendments and repeals will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.005 and 410.258 and have a clearer set of rules about the dispute resolution process that is current, accurate, and readable, which promotes transparent and efficient regulation.

Deputy Commissioner Craddock expects that the proposed amendments and repeals will not increase the cost to comply with Labor Code §§408.005 and 410.258 because they do not impose requirements beyond those in the statute or that exist in current rules. As a result, any cost associated with the rules does not result from the enforcement or administration of the proposed amendments and repeals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments and repeals will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments and repeals remove unnecessary language and better organize the rule. They do not change the people the statute affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments and repeals remove unnecessary language and requirements for parties involved in the dispute resolution process.

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

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

DWC made these determinations because the proposed amendments and repeals will remove unnecessary language and better organize the rule, so the dispute resolution process is easier to

navigate and understand. DWC made these determinations because the proposed amendments enhance efficiency and clarity; conform the language to current agency structure, practice, and related rules; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs.

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

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on May 6, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

28 TAC §§147.1 - 147.3, 147.6, 147.8, 147.9

STATUTORY AUTHORITY. DWC proposes repealing §§147.1 - 147.3, 147.6, 147.8, and 147.9 under Labor Code §§401.011, 408.005, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §401.011 provides definitions used in workers' compensation.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Sections 147.1 - 147.3, 147.6, 147.8, and 147.9 implement Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258. Section 401.011 was enacted by Senate Bill 1, 71st Legislature, 2nd Called Session (1989). Section 408.005 was enacted by House Bill (HB) 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature, Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

§147.1. *Definitions.*

§147.2. *Form.*

§147.3. *Execution.*

§147.6. *Settlement Conference.*

§147.8. *Withdrawal from Settlement.*

§147.9. *Requirements for Agreements and Settlements.*

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 March 21, 2024.

TRD-202401248

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 804-4703



28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, 147.11

STATUTORY AUTHORITY. DWC proposes adding new §147.1 and amending §§147.4, 147.5, 147.7, 147.10, and 147.11 under Labor Code §§408.005, 408.128, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §408.128 provides that an employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage. An employee who elects to

commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. New §147.1 and amended §§147.4, 147.5, 147.7, 147.10, and 147.11 implement Labor Code §§408.005, 408.128, 410.029, 410.030, and 410.258. Section 408.005 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 408.128 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature, Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

§147.1. *Form and Execution.*

(a) A settlement or a written agreement must be on a form prescribed by the division.

(b) In addition to the parties, the employee's representative, if any, must sign the written agreement or settlement.

(c) Unless the division finds that an extraordinary circumstance applies, an employee's representative must not sign a written agreement or settlement on behalf of the employee.

(d) The insurance carrier's representative must sign a written agreement or settlement as the agent of the insurance carrier, and the insurance carrier will be bound by the written agreement or settlement.

§147.4. [Filing] Agreements [with the Commission]; [Filing and Effective Dates.]

(a) An agreement [reached before a benefit proceeding has been scheduled] may be reduced to writing and sent to the division [commission field office handling the claim]. [If the parties include a request for commission approval, the] The agreement is effective and binding on the date the division approves it [approved by the commission].

[(b) A written agreement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer. The presiding officer will review the agreement to ascertain that it complies with the Texas Workers' Compensation Act and these rules; if so, sign it, and furnish copies to the parties. A written agreement is effective and binding on the date signed by the presiding officer.]

(b) [(e)] An oral agreement reached during a benefit contested case hearing and preserved in the record is effective and binding on the date made.

(c) [(d)] A signed written agreement, or one made orally, as provided by subsection (b) [(e)] of this section, is binding on:

(1) an insurance [a] carrier and a claimant represented by an attorney through the final conclusion of all matters relating to the claim, whether before the division [commission] or in court, unless set aside by the division [commission] or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause; and

(2) a claimant not represented by an attorney through the final conclusion of all matters relating to the claim while the claim is pending before the division [commission], unless set aside by the division [commission] for good cause.

[(e) Breach of an agreement approved by the commission, done knowingly, is a Class C administrative violation, with a penalty not to exceed \$1,000.]

§147.5. Settlements: Requirements, Effective Dates, and Informal Settlement Conferences [Filing Settlements with the Commission; Effective Dates].

(a) A settlement [reached before a benefit proceeding has been scheduled] must [shall] be sent to the division [commission field office handling the claim].

[(b) A settlement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer.]

[(c) The commission employee receiving a settlement will sign it, mark it with the date received, and forward it to the director of the division of hearings.]

[(d) A properly completed and executed settlement shall be deemed received by the director of the division of hearings on the second day after it is filed with any commission field office, as provided by subsection (a) of this section, or any presiding officer, as provided by subsection (b) of this section.]

[(e) The director of the division of hearings shall approve a settlement determined to be in compliance with the requirements established in the Texas Workers' Compensation Act, §4.33(e).]

(b) [(f)] The division [director] may[.] approve or reject it before the 16th day after the date the settlement is submitted to the division. [within 15 days of the date the settlement was received:

[(1) approve it by signing it, and marking it with the date signed; or]

[(2) reject it by marking it "Rejected," signing it, and marking it with the date signed.]

[(g) The director shall promptly furnish copies of the approved or rejected settlement to all parties by first class mail or personal delivery. A rejected settlement shall be accompanied by a written statement of the reasons for rejection.]

[(h) Unless previously expressly rejected by the director of the division of hearings, a settlement is effective and binding on the earlier of:]

[(1) at the close of business day of the date approved by the director of the division of hearings; or]

[(2) the 16th day after the date filed with the director of the division of hearings.]

(c) A settlement must:

(1) establish that the insurance carrier is liable for the claim;

(2) establish that the claim is compensable;

(3) establish that the employee is entitled to benefits;

(4) incorporate by reference all prior oral and written agreements between the parties; and

(5) state that a final resolution has been reached on all issues in the claim, and that the parties waive their rights to subsequent division proceedings, other than those necessary to resolve medical benefit disputes or to enforce compliance with the terms of the settlement.

§147.7. Agreements and Settlements: Effect on Previously Entered Decisions and Orders.

(a) A written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or order, as it relates to the agreement, on the date the agreement is approved by the presiding officer.

(b) A settlement filed before a presiding officer's decision becomes final sets aside a presiding officer's decision or order, except for an interlocutory order, on the date received by the division [director of the division of hearings]. If the division [director of the division of hearings] rejects the settlement, the decision or order will [shall] be immediately reentered.

(c) A settlement sets aside an interlocutory order on the date the settlement becomes effective.

§147.10. Notification to the Division of Proposed Judgments and Settlements [Commutation of Impairment Income Benefits].

[(a) An employee may elect to commute impairment income benefits when the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage.]

(a) [(b)] A request to commute impairment income benefits must:

(1) be in writing on a form prescribed by the division [commission-prescribed form];

(2) state the date the employee reached maximum medical improvement, [;] the impairment rating, [;] and the employee's weekly impairment income benefit;

(3) be sent to the insurance carrier; and

(4) be filed with the division [commission field office managing the claim].

[(e) The commission-prescribed form shall include a warning to the employee that commutation terminates the employee's entitlement to additional income benefits for the injury.]

[(d) The employee may contact the commission field office managing the claim to obtain or verify the information required to be included in the request.]

(b) [(e)] The insurance carrier must [shall] send a notice of approval or denial of the request to the employee no later than 14 days after receiving [receipt of] the request. A notice of approval must [shall] include payment of the commuted impairment income benefits. A notice of denial must [shall] include the insurance carrier's reasons for denial. A copy of the notice must [shall] be filed with the division [commission field office managing the claim].

(c) [(f)] If the insurance carrier denies the request, the employee may request the division [commission] to schedule a benefit review conference to resolve the issue, as provided by §141.1 of this title (relating to Form and Execution [Requesting and Setting a Benefit Review Conference]).

§147.11. Notification to Division [of Commission] of Proposed Judgments and Settlements.

[(a) The party who requested judicial review under Chapter 410, Subchapter F or G shall file a copy of any proposed judgment or settlement with the executive director of the Commission by filing it with the General Counsel of the Commission not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. A proposed judgment or settlement must be sent by certified mail return receipt requested.]

[(b) The insurance carrier or its representative must [shall] file [with the General Counsel of the Commission] a copy of a final judgment or settlement with the division no [not] later than the 10th day after a court approves the agreement or settlement.

[(c) For suits seeking judicial review filed under Chapter 410, Subchapter F (regarding Judicial Review General Provisions) or Subchapter G (regarding Judicial Review of Issues Regarding Compensability or Income or Death Benefits), on or after September 1, 1997, a judgment or settlement which is not filed with the commission in compliance with subsections (a) and (b) of this section is void.]

[(d) A party who violates this section may be subject to an administrative penalty, including a penalty of up to \$1,000 pursuant to the Texas Labor Code, §415.0035 or up to \$10,000 pursuant to the Texas Labor Code, §415.021 for repeated violations.]

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 March 21, 2024.

TRD-202401249

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 804-4703



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER S. NEXT GENERATION 9-1-1 SERVICE FUND

34 TAC §5.480

The Comptroller of Public Accounts proposes amendments to §5.480, concerning next generation 9-1-1 service fund.

The comptroller proposes the amendments to comply with changes made to Health and Safety Code, §771.0713, relating to the Next Generation 9-1-1 Service Fund, by House Bill 3290, 88th Legislature, R.S., 2023. The legislation enacted within the last four years that provides the statutory authority for the amendments is House Bill 2911, 87th Legislature, R.S., 2021, and House Bill 3290, 88th Legislature, R.S., 2023.

The amendments to subsection (a) add the definition of "Coronavirus funds" to shorten the references to these funds, making the rule easier to read.

The amendments to subsection (b) update this subsection to comply with Health and Safety Code, §771.0713(b), as amended by House Bill 3290.

The amendments to subsection (c) update this subsection to comply with Health and Safety Code, §771.0713(f), as amended by House Bill 3290; provide that paragraph (2) of this subsection, concerning the date by which all money deposited to the credit of the fund must be distributed, and clarify that money deposited to the credit of the fund may be distributed only as provided in Health and Safety Code, §771.0713(c), (c-1), (c-2), and (c-3).

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under House Bill 2911, §5, 87th Legislature, R.S., 2021, which requires the comptroller to adopt rules necessary to establish and administer the next generation 9-1-1 service fund established under Health and Safety Code, §771.0713.

The amendments implement Health and Safety Code, §771.0713.

§5.480. *Next Generation 9-1-1 Service Fund.*

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

(1) Commission--The Commission on State Emergency Communications.

(2) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(3) Coronavirus funds--Coronavirus State and Local Fiscal Recovery Funds under American Rescue Plan Act of 2021 (Pub. L. No. 117-2), §9901.

(4) [(3)] Emergency communication district--Has the meaning assigned by Health and Safety Code, §771.001(3).

(5) [(4)] Fund--The Next Generation 9-1-1 Service Fund established under Health and Safety Code, §771.0713.

(6) [(5)] Next generation 9-1-1 service--Has the meaning assigned by 47 U.S.C. §942.

(b) Transfer of money to the fund.

(1) Notwithstanding any other law and except [E]xcept as provided by federal law, the comptroller shall transfer to the credit of the fund as authorized by the legislature any amount available from federal money provided to this state from the Coronavirus funds [State and Local Fiscal Recovery Funds under §9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2)] or from any other state or federal governmental source for purposes of Health and Safety Code, Chapter 771, including money appropriated or otherwise credited to the fund.

(2) The comptroller shall transfer the money as soon as practicable following:

(A) the receipt by this state of a sufficient amount of federal money for the transfer; or[.]

(B) the effective date of the most recent legislative appropriation for purposes of Health and Safety Code, Chapter 771.

(c) Administration, distribution, and use.

(1) The commission shall administer the fund.

(2) The commission shall distribute all money deposited to the credit of the fund from the Coronavirus funds [as appropriated by the legislature], including any interest earned on money deposited to the credit of the fund from the Coronavirus funds, by August 31, 2024 [December 31, 2022]. This paragraph does not apply to the distribution of money deposited to the credit of the fund from any other state or federal governmental source for purposes of Health and Safety Code, Chapter 771, including money appropriated or otherwise credited to the fund.

(3) Money deposited to the credit of the fund:

(A) may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration;

(B) may be distributed to only the commission and emergency communication districts as provided in Health and Safety Code, §771.0713(c), (c-1), (c-2), and (c-3); and

(C) must be used in a manner that complies with state and federal law, including the requirements of Health and Safety Code, §771.0713.

(4) All money distributed under paragraph (2) of this subsection must be spent by December 31, 2026 [2024].

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

Filed with the Office of the Secretary of State on March 20, 2024.

TRD-202401239

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 475-2220



CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER A. BROADBAND POLE REPLACEMENT PROGRAM

34 TAC §§16.1, 16.3, 16.4, 16.8 - 16.10, 16.12

The Comptroller of Public Accounts proposes amendments to §16.1 concerning definitions, §16.3 concerning notice and applications, §16.4 concerning eligible applicants, §16.8 concerning reimbursement awards, §16.9 concerning payment, §16.10 concerning requirements, and §16.12 concerning noncompliance.

The amendments comply with House Bill 1505, §1, 87th Legislature, R.S., 2021, and House Bill 9, §2, 88th Legislature, R.S., 2023, which establish the broadband pole replacement fund and the Texas broadband pole replacement program and require the comptroller to prescribe rules for the program.

The amendments to §16.1 add new definitions. The amendments also include conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.3 clarify the methods by which the office is required to provide notice of the availability of grant funds for award. The amendments also include conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.4 establish additional eligibility requirements related to eligible costs and grant eligibility requirements.

The amendments to §16.8 add a requirement for grant recipients to negotiate and sign a grant agreement prior to issuance of a reimbursement award.

The amendments to §16.9 clarify that date from which the time period within which a reimbursement award must be paid to a grantee starts after a notice of a reimbursement award is issued.

The amendments to §16.10 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.12 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed

amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by conforming the rule to current statute. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Greg Conte, Director, Broadband Development Office, at broadband@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.553(c), which requires the comptroller to prescribe rules for the Texas broadband pole replacement program.

The amendments implement Government Code, Chapter 403, Subchapter S, concerning infrastructure and broadband funding.

§16.1. Definitions.

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

(1) Applicant--A person that has submitted an application for a reimbursement award under this subchapter.

(2) Broadband serviceable location--A business or residential location in this state at which qualifying broadband service is, or can be, installed, including a community anchor institution.

(3) ~~[(2)]~~ CCPF--The Coronavirus Capital Projects Fund (42 U.S.C. §804), established by §604 of the Social Security Act, as added by §9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(4) ~~[(3)]~~ Eligible broadband facility--Has the meaning assigned by Government Code, §403.553(a)(1) [~~§403.503(a)(1)~~].

(5) Eligible county--A rural county in which, according to the latest broadband availability data made available by the Federal Communications Commission, more than 20% of the broadband serviceable locations in the area either:

(A) lack access to fixed, terrestrial broadband service capable of providing a download speed of at least 25 megabits per second (Mbps) and an upload speed of at least 3 Mbps; or

(B) are subject to a federal or state grant to deploy broadband service, the conditions of which limit the availability of a grant to unserved areas.

(6) ~~[(4)]~~ Eligible pole replacement cost--Has the meaning assigned by Government Code, §403.553(a)(2) [~~§403.503(a)(2)~~].

(7) ~~[(5)]~~ Grant recipient or Grantee--An applicant that receives a reimbursement award under this subchapter.

(8) ~~[(6)]~~ Grant funds--Monies in the pole replacement fund.

(9) ~~[(7)]~~ NOFA--Notice of Funding Availability.

(10) ~~[(8)]~~ Office--The Broadband Development Office established within the comptroller's office under Government Code, Chapter 490I.

(11) ~~[(9)]~~ Pole--Has the meaning assigned by Government Code, §403.553(a)(5) [~~§403.503(a)(5)~~].

(12) ~~[(10)]~~ Pole owner--Has the meaning assigned by Government Code, §403.553(a)(6) [~~§403.503(a)(6)~~].

(13) ~~[(11)]~~ Pole replacement fund--Has the meaning assigned by Government Code, §403.551(1) [~~§403.501(1)~~].

(14) ~~[(12)]~~ Pole replacement program--Has the meaning assigned by Government Code, §403.551(2) [~~§403.501(2)~~].

(15) ~~[(13)]~~ Qualifying broadband service--Has the meaning assigned by Government Code, §403.553(a)(3) [~~§403.503(a)(3)~~].

(16) Rural county--A county with a population of less than 100,000 that is not adjacent to a county with a population of more than 350,000.

(17) ~~[(14)]~~ Unserved area--Has the meaning assigned by Government Code, §403.553(a)(4) [~~§403.503(a)(4)~~].

§16.3. Notice and Applications.

(a) The office shall use one or more methods[;] as necessary to provide notice of the availability of funds for award under this subchapter including publication[;] publish a NOFA] in the *Texas Register* or on the *Electronic State Business Daily*[; and on the comptroller's] website. The comptroller may make available a copy of the NOFA on the comptroller's website.

(b) The NOFA published under subsection (a) of this section [notice] may include:

(1) the total amount of grant funds available for reimbursement awards;

(2) the minimum and maximum amount of grant funds available for each application;

(3) limitations on the geographic distribution of grant funds;

(4) eligibility requirements;

(5) application requirements;

(6) reimbursement award and evaluation criteria;

(7) the date by which applications must be submitted to the office;

(8) the anticipated date of reimbursement awards; and

(9) any other information the office determines is necessary for award [awarding the reimbursement as determined by the office].

(c) All applications for a reimbursement award submitted under this subchapter must comply with the requirements of Government Code, §403.553(g) [~~§403.503(g)~~], and any requirements contained in a NOFA published by the office.

(d) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically. [Applicants must apply for a reimbursement award using the procedures, forms, and certifications prescribed by the office.]

(e) The office may require applicants to submit preliminary information to the office prior to submitting a completed application for

a reimbursement award to enable the office to determine each applicant's eligibility to apply for a reimbursement award and to compile aggregate information that applicants may use in determining whether to complete the application process.

(f) During the review of an application, an applicant may be instructed to submit to the office additional information necessary to complete the review. Such requests for information do not serve as notice that the office intends to fund an application.

§16.4. Program Eligibility Requirements; Eligible Applicants; Costs.

(a) The office may award grant funds for actual and reasonable costs paid or incurred by an eligible applicant to remove and replace a pole in unserved areas that are located within an eligible county.

(b) An applicant is eligible to apply to the office for a reimbursement award under this subchapter if the applicant:

(1) is a pole owner or a provider of qualifying broadband service; ~~and~~

(2) pays or incurs eligible pole replacement costs of removing and replacing an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility; and~~[-]~~

(3) otherwise meets eligibility criteria prescribed by the office in a NOFA published under §16.3 of this subchapter.

(c) Eligible costs include the amount of any expenditures to remove and dispose of the existing pole, purchase and install a replacement pole, and transfer any existing facilities to the new pole.

(d) Costs that an applicant incurs that have been or will be reimbursed to the applicant by another party ultimately responsible for the costs are not eligible for reimbursement under this subchapter.

(e) An award under this subchapter may not exceed:

(1) The lesser of 50% of the eligible pole replacement costs paid or incurred by the applicant or \$5,000, whichever is less, for the pole replaced; plus

(2) the documented and reasonable administrative expenses incurred by the applicant in preparing and submitting the reimbursement application.

(f) The amount reimbursed under subsection (e)(2) of this section may not exceed 5.0% of the eligible pole replacement costs in the application.

§16.8. Reimbursement Awards.

(a) The office shall make a determination and ~~must~~ provide [a] notice of a reimbursement award or a notice of denial to an applicant ~~[, in writing,]~~ not later than 60 calendar days after the date that the office receives a completed application from the applicant. An application will not be considered complete for purposes of this section unless an applicant has provided all the information necessary for the office to review the application, including any additional information requested by the office to complete the review.

(b) All grant funding decisions made by the office are final and are not subject to appeal.

(c) The approval of a reimbursement award shall not obligate the office to make any additional, supplemental, or other reimbursement award.

(d) The office shall provide notice of award to a successful applicant and, as applicable, the pole owner and the retail broadband service provider attaching the eligible broadband facility. A grant recipient shall have 30 calendar days from the notice of award to negotiate

and sign the grant agreement. The comptroller may extend the deadline to fully execute the grant agreement upon a showing of good cause by a grant recipient. If the grant agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award of the grant agreement or the extended deadline date, the office may rescind the award.

(e) The office shall issue the award after the grant recipient signs the grant agreement.

§16.9. Payment.

A reimbursement award must be paid to a grant recipient ~~[grantee]~~ not later than 30 calendar days after the date the office issues an [a notice of a reimbursement] award under §16.8(e) ~~[\$16.8(a)]~~ of this subchapter.

§16.10. Requirements.

(a) The administration and use of a reimbursement award are subject to:

(1) the terms and conditions of the reimbursement award;

(2) the requirements of Government Code, Chapter 403, Subchapter ~~§~~ [R]; and

(3) any other state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award.

(b) Grant funds may be used only for the purpose of supporting the pole replacement program, including the costs of program administration and operation.

(c) A grantee is the entity legally and financially responsible for compliance with state and federal laws, rules, regulations, and guidance applicable to the reimbursement award.

(d) Grant funds shall not be used for costs that will be reimbursed by any other federal or state funding source. The office may require an applicant/grantee to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the pole replacement program.

§16.12. Noncompliance.

(a) If the office has reason to believe that a grantee has violated any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, the office shall provide written notice of the allegations to the grantee and provide the grantee with an opportunity to respond to the allegations.

(b) If the office finds on substantial evidence that a grantee has materially violated the requirements of Government Code, §403.553 ~~[\$403.503]~~, with respect to reimbursements or portions of reimbursements, the office may direct the grantee to refund the reimbursement or a portion of the reimbursement with interest at the applicable federal funds rate as specified by Business and Commerce Code, §4A.506(b).

(c) If the office finds that a grantee has failed to comply with any term or condition of a reimbursement award, or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, other than the requirements described in subsection (b) of this section, the office may:

(1) direct the grantee to refund the reimbursement award or a portion of the reimbursement award;

(2) withhold reimbursement award amounts to a grantee under this subchapter pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

- (4) terminate the reimbursement award in whole or in part;
- (5) prohibit the grantee from being eligible for future reimbursement awards under the pole replacement program; or
- (6) exercise any other legal remedies available at law.

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

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Victoria North
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Comptroller of Public Accounts
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