

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §§18.21, 18.23 - 18.26

The Texas Ethics Commission (the Commission) proposes the repeal of §§18.21, 18.23 - 18.26 of Chapter 18, Title 1 of the Texas Administrative Code, regarding the administrative waivers of statutory civil penalties for late filing of statements and reports.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties for late reports assessed through the "administrative process." The rules as currently constructed are overly complicated. The complexity makes it difficult and time-consuming for staff to process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to change substantially for the Commission to timely process waiver requests. These repeals are submitted along with new Ethics Commission Rules §§18.21, 18.24, 18.25 and 18.26, which are submitted separately.

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

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

The General Counsel has determined that during the first five years that the proposed repeals are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

The Commission invites comments on the proposed repeal of these rules from any member of the public. A written statement should be emailed to public_comment@ethics.state.tx.us,

or mailed or delivered to J.R. Johnson, Executive Director, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070. A person who wants to offer spoken comments to the Commission concerning the proposed repeal of these rules may do so at any Commission meeting during the agenda item relating to the proposed repeal of the 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 repeal of these rules is proposed under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code.

The proposed repeal of these rules affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

§18.23. Administrative Waiver of Statutory Civil Penalties.

§18.24. General Guidelines for Other Administrative Waiver or Reduction of Statutory Civil Penalties.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties.

§18.26. Administrative Waiver or Reduction of Other Statutory Civil Penalties in Excess of \$500.

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 17, 2023.

TRD-202301394

Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 4, 2023

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



1 TAC §§18.21, 18.24 - 18.26

The Texas Ethics Commission (the Commission) proposes new Texas Ethics Commission Rules in Chapter 18. Specifically, the Commission proposes new rules §18.21, regarding Jurisdiction to Consider Waiver Request, §18.24, regarding General Guidelines for Administrative Waiver or Reduction of Statutory Civil Penalties, §18.25, regarding Administrative Waiver or Reduction of Certain Statutory Civil Penalties, and §18.26, regarding Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of \$500.

The Commission seeks to simplify the rules and streamline the processing of requests for waiver or reduction of civil penalties

for late reports assessed through the administrative process. The rules as currently constructed are overly complicated. The complexity makes it difficult and time consuming for staff to process waiver requests. The complexity also makes it difficult for the regulated community to understand their rights under the rules. The Commission believes the rules need to change substantially for the Commission to timely process waiver requests. These proposed amendments are submitted along with the proposed repeal of 1 TAC §§18.21, 18.23, 18.24, 18.25 and 18.26, which is submitted separately. The proposed rules preserves the right to appeal the determination of a waiver or reduction under the rules to the Commission.

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

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

The General Counsel has determined that during the first five years that the proposed new rules are in effect, they will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; expand, limit, or repeal an existing regulation; create a new regulation; increase or decrease the number of individuals subject to the rules' applicability; or positively or adversely affect this state's economy.

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

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

The proposal affects Title 15 of the Election Code.

§18.21. Jurisdiction to Consider Waiver Request.

(a) A filer may ask the commission to waive or reduce a civil penalty determined by §§ 305.033(b) or 572.033(b) of the Government Code, or §254.042(b) of the Election Code by submitting a written request to the Commission.

(b) The commission will not consider a request under subsection (a) of this section unless the filer, not later than 60 days after the report or statement was due:

(1) submits the request in the manner prescribed by subsection (a) of this section;

(2) files all reports owed to the commission; and

(3) pays all outstanding civil penalties owed to the commission that are not subject to a pending request for waiver or appeal.

(c) Upon a showing of good cause, the executive director may extend the deadline in subsection (b) of this section.

§18.24. General Guidelines for Administrative Waiver or Reduction of Statutory Civil Penalties.

(a) For purposes of determining whether a filer is eligible for a waiver or reduction of a civil penalty under §18.25 or §18.26 of this title (relating to Administrative Waiver or Reduction of Certain Statutory Civil Penalties and Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of \$500 respectively), a "prior late offense" is any report for which a civil penalty for late filing was assessed, regardless of whether the civil penalty was waived or reduced. The term does not include:

(1) reports for which no late notices were sent and the filer did not file a request that the civil penalty be waived or reduced for the prior late report; and

(2) reports determined by the executive director to be not required.

(b) A civil penalty that is reduced under §18.25 or §18.26 of this title will revert to the full amount originally assessed if the reduced civil penalty is not paid within thirty (30) calendar days from the date of the letter informing the filer of the reduction.

(c) A filer may appeal a determination made under §18.25 or §18.26 of this title by submitting a request for appeal in writing to the commission.

(1) The request for appeal should state the filer's reasons for requesting an appeal, provide any additional information needed to support the request, and state whether the filer would like the opportunity to appear before the commission and offer testimony regarding the appeal.

(2) The Executive Director may review the appeal and reconsider the determination made under §18.25 or §18.26 of this title or set the appeal for a hearing before the commission.

(3) After hearing a request for appeal, the commission may affirm the determination made under §18.25 or §18.26 of this title or make a new determination based on facts presented in the appeal.

§18.25. Administrative Waiver or Reduction of Certain Statutory Civil Penalties.

(a) The executive director shall apply this section to late report subject to statutory civil penalty of not more than \$500.

(b) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Figure: 1 TAC §18.25(b)

§18.26. Administrative Waiver or Reduction of Statutory Civil Penalties in Excess of \$500.

(a) The executive director shall apply this section to late report subject to statutory civil penalty in excess of \$500.

(b) The executive director shall use the following chart to determine the level of waiver or reduction of a civil penalty under this section:

Figure: 1 TAC §18.26(b)

(c) For purposes of using the chart in subsection (b) of this section:

(1) where the chart identifies a dollar amount, that is the amount of the reduced or waived penalty; and

(2) where the chart identifies a percentage, that is the percentage by which the penalty is reduced.

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 17, 2023.

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Jim Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: June 4, 2023

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



TITLE 7. BANKING AND SECURITIES

PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 52. CHARTER APPLICATIONS

7 TAC §§52.1 - 52.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 52, as follows: §§52.1 - 52.15. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 52.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in

costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 52; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 52; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§52.1. *Form and Content of Application to Incorporate; Requirements for Capital Stock and Paid-in Surplus or Savings Liability and Expense Fund; Payment before Opening for Business.*

§52.2. *Use of Approved Forms.*

§52.3. *Hearing on Charter Application; Subsequent Competing Application Filed Prior to Hearing; Amendments to Charter Applications.*

§52.4. *Publication of Notice of Charter Application.*

§52.5. *Notice to Associations.*

§52.6. *Filing Proof of Publication.*

§52.7. *Hearing When Application Not Protested.*

§52.8. *Purpose of Hearing; Post-Hearing Investigation.*

§52.9. *Time of Decision on Charter Applications.*

§52.10. *Motions for Rehearing.*

§52.11. *Definition of Community.*

§52.12. *Identification of Office Site; Temporary Location.*

§52.13. *Qualifying Management.*

§52.14. *Notice to Applicants.*

§52.15. *Appeals.*

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 24, 2023.

TRD-202301442

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535

CHAPTER 53. ADDITIONAL OFFICES

7 TAC §§53.1 - 53.5, 53.7 - 53.10, 53.17, 53.18

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 53, as follows: §§53.1 - 53.5, 53.7 - 53.10, 53.17, and 53.18. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 53.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public

benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 53; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 53; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§53.1. *Establishment and Operation of Additional Offices.*

§53.2. *Types of Additional Offices.*

§53.3. *Content of Branch Office Application; Filing of Another Application; Notice; Publication; Hearing; Decision.*

§53.4. *Findings Necessary for Approval of Branch Office.*

§53.5. *Loan Production Offices (Loan Offices), Administrative Offices, and Deposit Production Offices.*

§53.7. *Verification of Applications.*

§53.8. *Mobile Facility Application; Operation of Mobile Facility; Notice; Publication; Hearing.*

§53.9. *Exemption for Supervisory Sale.*

§53.10. *Designation of Supervisory Sale.*

§53.17. *Temporary Closing of Additional Offices.*

§53.18. *Offices in Other States or Territories.*

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 24, 2023.

TRD-202301443

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 57. CHANGE OF OFFICE LOCATION OR NAME

7 TAC §§57.1 - 57.4

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 57, as follows: §§57.1 - 57.4. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings

and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 57.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed

rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 57; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 57; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§57.1. Change of Office Location Not Requiring Approval; Application for Change of Location; Findings for Approval.

§57.2. Notice, Publication, Hearing.

§57.3. Change of Name.

§57.4. Application Forms.

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 24, 2023.

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 60. SAVINGS ASSOCIATIONS

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes new rules in 7 TAC Chapter 60, as follows: §§60.1, 60.2, 60.101 - 60.104, 60.121 - 60.123, 60.131 - 60.133, 60.141 - 60.145, 60.161 - 60.165, 60.171, 60.181, 60.191, 60.201 - 60.204, 60.221 - 60.227, 60.231 - 60.234, 60.241 - 60.245, 60.251, 60.252, 60.261, 60.301 - 60.309, 60.321, 60.323 - 60.326, and 60.331. This proposal and the rules as added as a new rule by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13, 65.14, 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the proposed rules.

Changes Concerning Holding Companies

Pursuant to Finance Code §66.051(a), the department's commissioner (commissioner) is required to conduct periodic examinations of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.053, the commissioner is entitled access to the books and records of a savings association, its subsidiaries, and any holding company of the savings association. Pursuant to Finance Code §66.103(a), the commissioner may intervene in the affairs of a savings association if a person that participates in the affairs of the savings association, its subsidiaries, or any holding company of the savings association, is about to commit: a fraudulent or criminal act that may cause the savings association to be insolvent; an act that threatens harm to the public, the savings association, or its account holders or creditors; or a breach of fiduciary duty that results in substantial financial losses or other damages to the savings association or that would prejudice the interests of its account holders or shareholders. Pursuant to Finance Code §66.104, the commissioner may intervene in the affairs of a savings association if a person who participates in the affairs of the association, its subsidiaries, or any holding company of the savings association, refuses to submit to or otherwise interferes with an examination conducted by the commissioner. In order to facilitate the examination of a savings association holding company and ensure the department has adequate knowledge of its existence and affairs, the proposed rules, if adopted, would: require a savings association to register with the department any holding company of the savings association within 90 days of the holding company becoming a holding company and pay a one-time application fee of \$2,000; require a savings association holding company and its subsidiaries to file periodic reports with the department as determined by the commissioner; require a savings association holding company and its subsidiaries to maintain books and records in the same manner required of a savings association; clarify the existing requirements of Finance Code §66.051(a) by requiring a savings association holding company and its subsidiaries to submit to and bear the costs of an examination; require a savings association holding company, if directed by the commissioner, to appoint an agent for service of process; and establish conditions under which a savings association holding company may be released from the registration requirements under the proposed rules, including a requirement that a savings association holding company maintain books and records after it has been released from such registration requirements.

Changes Concerning Fees

Pursuant to Finance Code §61.007(1), the commission, by rule, determines the fees assessed by the commissioner in connection with filing an application or other documents with the department. The department's existing rules in Chapter 63 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), establish fees for various applications filed with the department. Such existing rules do not establish a specific fee concerning an application by a financial institution other than a savings association seeking to convert to a savings association charter. Instead, the \$10,000 fee for a de novo charter application under existing §63.1 is assessed. The proposed rules, if adopted, would establish a specific fee for an application concerning such a conversion by a financial institution other than a savings association to a savings association charter. The fee is determined based on the

total asset size of the financial institution seeking to convert to a savings association charter, as follows: \$0 to less than \$125 million - \$2,500; \$125 million to less than \$500 million - \$5,000; \$500 million to less than \$1 billion - \$10,000; over \$1 billion - \$15,000. Under the proposed rules, the fee for converting to a savings association charter could therefore be higher or lower depending on the asset size of the financial institution seeking conversion; however, the department anticipates any potential application for conversion to a savings association charter under the proposed rules will be filed by a financial institution with an asset size of less than \$1 billion and will therefore result in a fee equal to or lesser than the fee under existing §63.1. The department asserts a graduated fee for an application for conversion based on the asset size of the financial institution seeking conversion better reflects the true costs of the department in processing the application and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions. Under existing §63.11 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$10,000 for an application concerning change of control of a savings association made in accordance with Finance Code Chapter 62, Subchapter L. The proposed rules, if adopted, would lower such fee from \$10,000 to \$5,000. Pursuant to Finance Code §66.052, the commissioner is required to conduct periodic examinations of the savings associations it regulates. Pursuant to Finance Code §66.052(a), the commissioner may conduct additional examinations of a savings association (each a special examination) if deemed by the commissioner to be appropriate based on the condition of the savings association. Pursuant to Finance Code §66.052(a), the savings association being examined is required to bear the costs of such special examination. Under existing §63.5 (proposed for repeal elsewhere this issue of the *Texas Register* in connection with the proposed rules related to Changes Concerning the Reorganization (Consolidation) of Chapter 52, 53, 57, 61, 63 - 65, 67, 69, 71 and 73 into Chapter 60), the department assesses a fee of \$325 per day for each examiner performing a special examination. The proposed rules, if adopted, would: assess a maximum fee of \$75 per hour for each examiner performing a special examination; clarify the existing requirement, pursuant to Finance Code §66.052(a), that a savings association bear the cost of the special examination, by clarifying that such costs include expenses related to travel, food, and lodging of the examiner performing the special examination; and clarify the commissioner's existing authority to assess a lower fee rate or otherwise waive any fees or costs related to a special examination. To the extent an examiner performing a special examination works a standard eight-hour day, the proposed rules would have the effect of raising the per diem fee from \$325 to \$600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The department asserts a per hour fee better reflects the true costs of the department in conducting a special examination and facilitates the department's compliance with Finance Code §16.003(c), requiring the department to collect only those amounts necessary for the purposes of carrying out its functions.

Other Modernization and Update Changes.

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing lan-

guage for clarity and to improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no probable economic costs to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs). The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association required to register a savings association holding company under the proposed rules. Specifically, the proposed rules, if adopted, would assess a \$2,000 application fee to a savings association required to register a savings association holding company; however, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a savings association subject to a special examination under Finance Code §66.052. Specifically, the proposed rules, if adopted, would change the fee assessed to a savings association for each examiner conducting the special examination from \$325 per day to \$75 per hour. To the extent

an examiner performing a special examination works a standard eight-hour day, the proposed rules would have the effect of raising the per diem fee from \$325 to \$600; however, if an examiner works four hours or less on any given day, the proposed rules would have the effect of lowering such per diem fee. The foregoing notwithstanding, no savings associations currently exist. As a result, these potential costs to persons required to comply with the proposed rules are not probable. Stephany Trotti has further determined that for the first five years the proposed rules are in effect the proposed rules related to Changes Concerning Fees may result in costs to a financial institution other than a savings association that files an application with the department seeking to convert to a savings association charter. Specifically, a financial institution with an asset size in excess of \$1 billion seeking to convert to a savings association charter will be assessed an application fee of \$15,000 under the proposed rules versus the \$10,000 fee assessed under the existing rules, representing a cost of \$5,000. The department anticipates that any potential application from a financial institution seeking to convert to a savings association charter will have an asset size below \$1 billion and such financial institution will therefore incur in a fee that is equal to or lesser than the fee assessed under existing requirements. The department asserts it is unlikely a depository institution with an asset size in excess of \$1 billion will seek to convert to a savings association charter. As a result, these potential costs to persons required to comply with the proposed rules are not probable.

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules related to Changes Concerning Holding Companies require an increase in fees paid to the agency as discussed in such section. The proposed rules related to Changes Concerning Fees may result in an increase or decrease in fees paid to the agency as discussed in such section; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Changes Concerning Holding Companies establish various requirements related to a savings association holding company as discussed in such section; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Loan Requirements have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section. The proposed rules related to Changes Concerning Savings and Deposit Accounts have the effect of repealing existing rule requirements as discussed in such section; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required. The foregoing notwithstanding, the department includes in this proposal a cost note addressing potential although improbable costs to persons required to comply with the proposed rules. As a result, the department also includes in this proposal an economic impact statement and a regulatory flexibility analysis concerning such improbable costs. The department incorporates by reference the Probable Economic Costs to Persons Required to Comply with the Proposed Rules section above as if fully set forth herein. No rural communities are substantially affected by the proposed rules. With respect to small and micro-businesses, the proposed rules are designed to implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings associations regulated by the department. No savings associations currently exist, including any that would constitute a small or micro business for purposes of Government Code Chapter 2006, and it is unlikely that a savings association would constitute a small or micro-business. The potential economic costs imposed by the proposed rules relate to: application fees by a savings association or a financial institution seeking to convert to a savings association charter; and fees for a savings association to pay for the costs associated with conducting a special examination of a savings association. Such fees are designed to allow the department to recoup its costs of regulation and ensure its compliance with Finance Code §16.003(c). Any potential alternative to recouping these costs from a small or micro-business would entail shifting such costs to the department's other regulated persons and those regulated persons paying a disproportionate share of the department's costs attributable to such regulated persons. As a result, the department asserts no viable alternative methods exist. The foregoing notwithstanding, the proposed rules include provisions allowing the commissioner to waive any costs or fees including with respect to a small or micro-business that may be adversely affected by the proposed rules.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §60.1, §60.2

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.2 is also proposed under the authority of, and to implement, Finance Code: §61.002; and §62.004(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.1. Purpose and Applicability.

This chapter governs the chartering, administration, and operations of a Texas-chartered savings and loan association under Finance Code Title 3, Subtitle B, the Texas Savings and Loan Act (Finance Code §61.001 et seq.).

§60.2. Definitions.

As used in this chapter, and in the Commissioner's administration and enforcement of Finance Code Title 3, Subtitle B, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(2) Affiliated person--

(A) a director, officer, or controlling person of a savings association;

(B) a spouse of a director, officer, or controlling person of a savings association;

(C) a member of the immediate family of a director, officer, or controlling person of a savings association, who is a director or officer of any subsidiary of a savings association or of any holding company affiliate of a savings association;

(D) any company (other than the savings association, its holding company, or an operating subsidiary) of which a director, officer, or controlling person of a savings association:

(i) is a director or officer;

(ii) in the case of a limited liability company, is a manager or managing member;

(iii) in the case of a partnership, is a general partner;

(iv) in the case of a partnership, is a limited partner who, directly or indirectly, either alone or with his or her spouse and the members of their immediate family who are also affiliated persons of the savings association, owns an interest of 10% or more in the partnership (based on the value of their contribution) or who, directly or indirectly with other directors, officers, and controlling persons of a savings association, and their spouses and their immediate family members who are also affiliated persons of the savings association, owns an interest of 25% or more in the partnership; or

(v) directly or indirectly, either alone or with their spouse and the members of their immediate family, who are also affiliated persons of the savings association, owns or controls 10% or more of any class of equity securities, or owns or controls with other directors, officers, and controlling persons of a savings association and their spouses and their immediate family members, who are also affiliated persons of the savings association, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of a savings association, or a member of the director's, officer's, or controlling person's immediate family, has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

(3) Application--An application requesting authorization or other relief from the Commissioner pursuant to this chapter or under the Texas Savings and Loan Act for which a filing fee is required under §60.102 of this title (relating to Application Fees and Charges).

(4) Appropriate banking agency--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(5) Board--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(6) Bylaws--The rules adopted to regulate or manage a company, regardless of the name used to designate the rules, and with respect to a limited liability company, means the company agreement, or similar rules adopted to regulate or manage the limited liability company.

(7) Capital stock--Has the meaning assigned by the Texas Savings and Loan Act (Tex. Fin. Code §61.002).

(8) Capital stock association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(9) Certificate of formation--The document evidencing the formation of the business entity, referred to in other governmental jurisdictions as the articles of incorporation, certificate of incorporation, or articles of organization, as applicable.

(10) Commissioner--The savings and mortgage lending commissioner appointed under Finance Code Chapter 13.

(11) Company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(12) Control--The power to exercise, directly or indirectly, a controlling influence over the management or policies of a company. Control is deemed to exist when a person, directly or indirectly, or acting through or in concert with one or more persons:

(A) owns, controls, or has the power to vote 25% or more of any class of voting securities of a company;

(B) is an officer or director of the company and owns, controls, or has the power to vote 10% or more of any class of voting securities of a company, and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities; or

(C) controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of a company.

(13) Controlling person--A person having control as defined by paragraph (12) of this section.

(14) Day--A calendar day, unless another method of counting days is specified.

(15) Deposit account--A savings account, certificate of deposit, withdrawable deposit, demand deposit account, checking account, or any other term referring to the amount of money a savings association owes an account holder as a result of the deposit of money in the savings association.

(16) Deposit liability--The aggregate amount of money shown by the books of the savings association to be owed to the savings association's bank deposit account holders after applying any legal or contractual reduction.

(17) FDIC--The Federal Deposit Insurance Corporation, including any successor.

(18) Finance Commission--The Finance Commission of Texas, the oversight body responsible for overseeing and coordinating the Department under Finance Code Chapter 11.

(19) Financial institution--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(20) GAAP--Generally Accepted Accounting Principles.

(21) Holding company--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "savings and loan holding company."

(22) Holding company affiliate--A company of which a savings association is a subsidiary and any other subsidiary of such company other than a subsidiary of the savings association.

(23) Home office--The office where a savings association has its headquarters and from which all of its operations are directed.

(24) Immediate family--The spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(25) Issuer--The savings association that issued the security in question.

(26) Managing officer--An individual designated by the board as being responsible for, and having the authority to direct, the day-to-day operations of the savings association. The managing officer must have sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that, under the management and supervision of the managing officer, the savings association will operate in compliance with applicable law and that success of the savings association is probable.

(27) Member--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(28) Mutual association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(29) Officer--The president, any vice president (but not an assistant vice president, second president, or other vice president having authority similar to an assistant or second vice president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any entity or organization, whether incorporated or unincorporated. The term "officer" includes the chairman of the board, if the savings association's certificate of formation or by-laws authorize the chairman to participate in the operating management of the entity or organization, or if the chairman actually participates in such management.

(30) Person--An individual, corporation, a partnership, a savings association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(31) Recourse--A contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

(32) Savings Association--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002) in defining the term "association."

(33) Shareholder--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(34) Subsidiary--Any company that is controlled by the savings association or by a company that is controlled by a company which is controlled, directly or indirectly, by the savings association.

(35) Surplus--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002).

(36) Texas Savings and Loan Act--Finance Code Title 3, Subtitle B (Finance Code §61.001 et seq.).

(37) Unsafe and unsound practice--Has the meaning assigned by the Texas Savings and Loan Act (Finance Code §61.002), and includes excessive operating expenses, excessive growth, high-risk or undiversified investment positions, and non-existent or poorly followed lending or underwriting policies, procedures, or guidelines.

(38) Voting security--Includes any security convertible into or evidencing a right to acquire a voting security.

(39) Withdrawal value--The net amount of money that may be withdrawn by an account holder from a deposit account.

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 24, 2023.

TRD-202301453

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



SUBCHAPTER B. APPLICATIONS DIVISION 1. GENERAL PROVISIONS

7 TAC §§60.101 - 60.104

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §§60.101 - 60.103 are also proposed under the authority of, and to implement, Finance Code §66.002(3). 7 TAC §60.102 is also proposed under the authority of Finance Code: §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to filing an application or other documents with the department. 7 TAC §60.102 is also proposed under the authority of, and to implement, Finance Code: §62.001(a); §62.011; and §63.004(d). 7 TAC §60.103 is also proposed under the authority of, and to implement, Finance Code: §62.006(a)(1); and §62.353(a)(1). 7 TAC §60.104 is also proposed under the authority of, and to implement, Finance Code §61.006.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.101. Application Filing Requirements.

(a) Purpose and Applicability. Applications submitted to the Department must comply with the requirements of this section.

(b) Application Forms. All applications must be made on the current form for the application prescribed by the Commissioner.

(c) Incomplete Filings; Notice of Acceptance; Deemed Withdrawal. An application is complete only if all required information and supporting documentation is included and all required fees are received. Within 30 days of receipt of an application the Commissioner or the Commissioner's designee will issue a written notice to the applicant informing them either that the application is complete and accepted for filing, or that the application is incomplete and specifying the information required to render the application complete. The application may be deemed withdrawn and the applicable fee forfeited if, within 30 days of being notified the application was incomplete, the applicant fails to provide to the Department the supplemental information or supporting documentation necessary to render the application complete.

(d) Duty to Supplement. The applicant has a continuing obligation and duty to supplement the application with any other information or supporting documentation requested by the Commissioner in writing. The applicant must provide any information or supporting documentation submitted in connection with any related application made to the appropriate federal banking agency, to the extent not previously provided to the Department.

(e) Duty to Amend. If a material change occurs in the facts contained in or information furnished in support of the application, the applicant must file an amended application or otherwise supplement the application to address the material change. The applicant must endeavor to resolve any potential changes or amendments to the application prior to publishing public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application). The Commissioner may, in his or her sole discretion, require the applicant to republish the public notice.

§60.102. Application Fees and Charges.

(a) Filing Fees. An applicant must pay the following filing fees:

(1) Charter Application and Amendments.

(A) Charter application: \$10,000.

(B) Change of name: \$500.

(C) Certificate of formation or bylaws amendments: \$100 per request.

(2) Office Locations.

(A) Branch office (other than a mobile facility): \$1,500.

(B) Mobile facility: \$500, plus \$100 for each location where the mobile facility is to be conducting banking business for purposes of §60.132 of this title (relating to Mobile Facility).

(C) Relocate home or branch office: \$500.

(3) Reorganization, merger, consolidation, conversion, or purchase and assumption:

(A) For a reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association, a fee of \$2,500 for each financial institution involved in the transaction.

(B) For a purchase and assumption transaction by a savings association as purchaser, a fee of \$2,000 for each financial institution involved in the transaction.

(C) For the conversion by a financial institution that is not a savings association into a savings association, the fee will be determined based on the total asset size of the institution, as follows:

(i) \$0 - 125 million: \$2,500.

(ii) \$125 million - \$500 million: \$5,000.

(iii) \$500 million - 1 billion: \$10,000.

(iv) over 1 billion - \$15,000.

(D) For the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with a financial institution that is not a savings association, no fee will be assessed.

(E) for the conversion of a mutual association into a capital stock association, a fee of \$7,500.

(4) Change of control (obtaining control of a savings association): \$5,000.

(5) Permission to issue capital notes or debentures: \$1,000.

(6) Holding company registration: \$2,000.

(7) Investment in subsidiaries.

(A) Initial investment: \$1,500, plus \$100 for each office other than the home office of the proposed subsidiary.

(B) Service subsidiary application to engage in a new activity: \$500.

(C) Redesignation of operating subsidiary: \$300.

(D) Change of name: \$100.

(E) Relocate home or branch office: \$100.

(b) Reimbursement for Costs. In addition to filing fees established in subsection (a) of this section, the applicant must reimburse the Department for any costs incurred in connection with investigating or conducting a hearing on the application, including travel expenses.

(c) Protest Filing Fee. A person filing a protest to an application or otherwise requesting a hearing on an application (other than the applicant) must pay a fee of \$2,500 at the time the protest or request for hearing is filed.

(d) Fees Nonrefundable; Discretion to Waive Fees and Costs. All filing fees must be paid at the time the application is filed and are nonrefundable. Except for fees set or required by statute, the Commissioner, in his or her sole discretion, may waive, in whole or in part, any fees or costs required by this section.

§60.103. Public Notice of Application.

If an application requires that notice to the public be given, such notice must comply with the requirements of this section. The notice must use language and content preapproved by the Commissioner prior to publishing. The notice must be submitted to the publisher for publication within 15 days after the date the applicant receives notice that the application is complete and accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The notice must be published in an English language newspaper of general circulation in each county required by the rule(s) governing such application. The applicant must, within 10 days after publishing the notice, provide the Commissioner with a publisher's affidavit evidencing that the notice was properly published in conformity with this section. The notice is deemed properly effected when the appropriate notice has been published in conformity with this section, and more than 10 days have elapsed.

§60.104. Motions for Rehearing.

A motion for rehearing pursuant to Finance Code §61.006 must be filed not later than the 14th day after the date the decision or order that is the subject of the motion is signed. A copy of the motion for rehearing must be served on all parties who made an appearance or otherwise submitted a filing in the proceeding, and the motion must include a certificate of service reciting the parties served and the method of service. A party must file a reply to the motion for rehearing, if any, not later than the 30th day after the date the decision or order that is the subject of the motion is signed. The Commissioner must act on the motion for rehearing not later than the 45th day after the date the decision or order that is the subject of the motion for rehearing is signed or the motion for rehearing is deemed overruled by operation of 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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DIVISION 2. CHARTER APPLICATIONS AND AMENDMENTS

7 TAC §§60.121 - 60.123

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.121 is also proposed to implement Finance Code: Chapter 62, Subchapter A; §62.152; and §66.002(3). 7 TAC §60.122 is also proposed under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.121. Savings Association Charter.

(a) Application Requirements. The charter application and all required supporting information must be executed by the proposed incorporators of the proposed savings association which must consist of at least five adult residents of this state and must include all of the information required by Finance Code §62.001. The application must include a request for a corporate name to be approved by the Commissioner. The application must include the proposed home office of the savings association, the identity and qualifications of the proposed managing officer(s), and any additional information the Commissioner deems necessary to enable the Commissioner to determine the matters set forth in Finance Code §62.007.

(b) Identification of Home Office; Definition of Community; Temporary Office Location. The proposed location for the home office must be specifically identified so as to exactly locate it within the community to be served. The term "community" as used in the Finance Code §62.007 means the geographical area surrounding the proposed location of the home office within which persons would be reasonably

anticipated to patronize the proposed office in the ordinary course of their business. The Commissioner may approve the opening and operation of a temporary home office location for an approved charter, provided that such office is within the 1/2-mile radius of the permanent home office approved in the charter. If a temporary home office location is approved, the savings association must promptly cease operations at such office upon the permanent home office being constructed or rendered fit for occupancy, but in any event no later than 18 months from the date the charter was approved, unless extended in writing by the Commissioner.

(c) Capital Requirements. No application to incorporate a savings association will be approved unless the Commissioner determines the proposed savings association has received subscriptions for capital stock and paid-in surplus in the case of a capital stock association, or pledges for savings liability and expense fund in the case of a mutual association, in an amount not less than the greater of the amount required to obtain insurance of deposit accounts by the FDIC or the amount required of a national bank. No savings association with an approved charter may open or do business as a savings association until the Commissioner certifies that the Commissioner has received satisfactory proof that the amounts of capital stock and additional paid-in capital, or the savings liability and expense fund, as set forth in this section, have been received by the savings association in cash, free of encumbrance.

(d) Public Notice. A charter application is deemed to be a complete application for purposes of Finance Code §62.006 at the time the Department notifies the applicant that the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the charter application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the proposed savings association will have its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the application for purposes of Finance Code §62.006.

(e) Request for Hearing; Deadline to Protest. A person may protest or otherwise request a hearing on the application as provided by Finance Code §62.006. Any person desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.006 is deemed waived.

(f) Hearing. If a charter application is protested or a hearing on the application is otherwise requested, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the charter application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the charter application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by Finance Code §62.006 and subsection (e) of this section.

§60.122. Change of Name.

(a) Approval Required. A savings association may not change its name without the prior written approval of the Commissioner, and a savings association may not operate under any name which has not been approved by the Commissioner in writing.

(b) Public Notice. An applicant seeking to change its name must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(c) Request for Hearing; Deadline to Protest. A person affected by the proposed name change may protest or otherwise request a hearing on the change of name application as provided by Finance Code §62.011. Any person affected by the proposed name change and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (b) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(d) Persons Affected by the Change of Name. A person is affected by a change of name for purposes of Finance Code §62.011 only if the requested name change, if granted, would result in the savings association's name being substantially or deceptively similar to the party alleged to be affected, or is otherwise reasonably anticipated to create confusion in the marketplace involving the party alleged to be affected. A person requesting a hearing on a change of name application must allege and provide information in support of their request indicating they are a person that might be affected by the proposed name change as provided by this section. The Commissioner will review the request for hearing and determine, in his or her sole discretion, if the person might be affected so as to require a hearing under Finance Code §62.011.

(e) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases contained in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(f) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (c) of this section.

§60.123. Certificate of Formation or Bylaws Amendments.

(a) Approval Required. A savings association may not amend its certificate of formation, bylaws, or other governing documents without the prior written approval of the Commissioner.

(b) Application Requirements. The application to amend the savings association's certificate of formation, or bylaws must include the proposed amendments together with an explanation as to why the amendments are necessary.

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

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DIVISION 3. OFFICE LOCATIONS

7 TAC §§60.131 - 60.133

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §62.011; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.131. Branch Office.

(a) Approval Required. A savings association may not establish a branch office or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner. A branch office application is required if a savings association would like to establish and operate a courier/messenger service pursuant to §60.202 of this title.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

- (1) proposed location for the office;
- (2) the personnel and office facilities to be provided;
- (3) the estimated cost and projected profits of such office;

and

(4) any information deemed necessary by the Commissioner to render a determination on the matters set forth in subsection (c) of this section.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) the character, responsibility, and general fitness of the current management of the savings association warrant a belief that the branch office will be operated in accordance with the Texas Savings and Loan Act; and

(3) the financial effect of establishing and operating the proposed office will not adversely affect the safe and sound operation of the savings association.

(d) Commencement of Operations. The branch office must commence operations within a period of 12 months after the date of approval unless the Commissioner grants a written extension. No more than one 12-month extension will be approved by the Commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the approval for such office is deemed revoked and a new application must be made.

(e) Identification of Branch Office; Definition of Community. The proposed location for the branch office must be specifically identified so as to exactly locate it within the community to be served. The

term "community" as used in Finance Code §62.008 means the geographical area surrounding the proposed location of the branch office within which persons would be reasonably anticipated to patronize the proposed office in the ordinary course of their business.

(f) Public Notice. An applicant seeking to establish a branch office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published both in the county where the proposed branch office is to be located and in the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed branch office may protest or otherwise request a hearing on the branch office application as provided by Finance Code §62.011. Any person affected by the proposed establishment of a branch office and desiring to protest the application or otherwise request a hearing on the application must file a written protest within the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

(j) Offices in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this chapter, a savings association may establish branch offices in any state or territory of the United States. Each application for permission to establish such a branch office must comply with the requirements of this section and must include a certified copy of an order from the appropriate banking agency approving the office, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve the application unless the Commissioner determines that all requirements of this chapter applicable to the office have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

§60.132. Mobile Facility.

(a) Approval Required. A savings association may not establish a mobile facility as provided by §60.202 of this title (relating to Types of Additional Offices) without prior written approval of the Commissioner.

(b) Required Information. The application must provide the following information, subscribed to and sworn before a notary:

- (1) the proposed location(s) at and times during which the mobile facility will operate;
- (2) the need for the mobile facility within the community;
- (3) the personnel and office facilities to be provided; and

- (4) the estimated expense to operate the mobile facility.

(c) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met. Additionally, the savings association must show that adequate safeguards exist for the security of the mobile facility.

(d) Public Notice. An applicant seeking to establish a mobile facility must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county or counties where the proposed mobile facility will be operating and in the county where the savings association has its home office.

(e) Request for a Hearing; Deadline to Protest. A person affected by the proposed establishment of a mobile facility may protest or otherwise request a hearing on the mobile facility application, as provided by Finance Code §62.011. Any person affected by the proposed establishment of a mobile facility and desiring to protest the application or otherwise request a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (d) of this section, otherwise, any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(f) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(g) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (e) of this section.

§60.133. Relocate Home or Additional Office.

(a) Approval Required. A savings association may not move its home office or any additional office as provided by §60.202 of this title (relating to Types of Additional Offices) beyond its immediate vicinity without the prior written approval of the Commissioner.

(b) Immediate Vicinity. The term "Immediate vicinity" as used in Finance Code §62.011 means the area within a radius of 1 mile from the present location of such office. However, if the office to be relocated has not been open for business at its present location for more than 2 years, approval in accordance with this section is required as if the office were not within the immediate vicinity. If the existing office has been open for more than 2 years, prior written notice must be provided to the Commissioner describing the saving association's plans for the relocation, including the precise location for the new office, the date of the relocation, and information supporting that the new location of the office will be within the immediate vicinity of the present location and does not require the Commissioner's approval.

(c) Relocation of Existing Offices. Notwithstanding subsection (a) of this section, a savings association may retain its existing home office as a branch office and relocate its home office to another established branch office by providing the Commissioner prior writ-

ten notice. Upon such notification, the establishment of such office is deemed to be an approved branch office of the savings association.

(d) Required Information. Each application for prior approval, or prior written notice, whichever is applicable, must provide the following information, subscribed to and sworn before a notary:

- (1) the addresses of the existing and new office location;
- (2) a description of the land and building to be built or leased and terms thereof;
- (3) estimates of the cost of removal to and maintenance of the new location;
- (4) whether any affiliated parties are involved in transactions regarding the purchase, sale, construction, or lease of the new proposed office;
- (5) evidence of the board's approval of the relocation; and
- (6) any other information deemed necessary by the Commissioner.

(e) Determination by Commissioner. The Commissioner will not approve the application unless the Commissioner determines that all requirements for approval of a branch office (§60.131 of this title, relating to Branch Office) have been met.

(f) Public Notice. An applicant seeking to change the location of the home or an additional office must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the office is presently located, the county where the proposed new location is located, and the county where the savings association has its home office.

(g) Request for Hearing; Deadline to Protest. A person affected by the proposed change in home or additional office location may protest or otherwise request a hearing on the application, as provided by Finance Code §62.011. Any person affected by the proposed change in home or branch office location and desiring to protest the application or otherwise requesting a hearing on the application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (f) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.011 is deemed waived.

(h) Hearing. If a hearing is required, the Commissioner will set a hearing on the application within 60 days after the date the protest or request for hearing and the required fee are received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(i) Time of Decision. To the extent a hearing on the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal or decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the application is not required, the Commissioner will render a decision within 30 days after the time period for protesting or requesting a hearing on the application lapsed as provided by subsection (g) of this section.

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DIVISION 4. REORGANIZATION, MERGER, CONSOLIDATION, CONVERSION, PURCHASE, AND ASSUMPTION AND ACQUISITION

7 TAC §§60.141 - 60.145

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.141 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapters B, H, and I; and §66.002(3). 7 TAC §60.142 is also proposed under the authority of, and to implement, Finance Code §62.353. 7 TAC §60.143 is also proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter E; and §66.002(3). 7 TAC §60.144 is proposed under the authority of, and to implement, Finance Code: Chapter 62, Subchapter F; and §66.002(a)(3). 7 TAC §60.145 is also proposed under the authority of, and to implement, Finance Code: §62.002; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.141. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association.

(a) Applicability. This section governs:

(1) A reorganization, merger, or consolidation transaction in which the resulting institution will be a savings association; and

(2) A purchase and assumption transaction by a savings association as purchaser.

(b) Non-Applicability. This section does not govern:

(1) the conversion of a savings association into another type of financial institution charter, or a reorganization, merger, or consolidation transaction that otherwise results in a savings association reorganizing into, or merging or consolidating with, a financial institution that is not a savings association, which is governed by section §60.143 of this title (relating to Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter); or

(2) the conversion by a financial institution that is not a savings association into a savings association, which is governed by section §60.144 of this title (relating to Conversion into a Savings Association).

(c) Plan Required. Any savings association seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a savings association must do so pursuant to a plan adopted by the board and filed with the Commissioner as a part of an application for approval. Purchase and assumption transactions include purchases of assets, deposit accounts, or other liabilities in bulk not made in the ordinary course of business.

(d) Application Required. The application for approval of the plan must contain: proof that the plan was adopted by the board of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the members or shareholders entitled to vote on the plan; a statement that the corporate continuity of the resulting institution will possess the same incidents as that of a savings association which has converted in accordance with the Texas Savings and Loan Act; and a statement identifying the home office of the resulting institution. A true and correct copy of the plan, as adopted, must be filed as part of the application. All documents and their contents must be subscribed and sworn to before a notary.

(e) Public Notice. An applicant seeking reorganization, merger, consolidation, conversion, purchase and assumption, or acquisition must publish a public notice of the plan and application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which a financial institution participating in the plan has its home office. Such notice, when properly effected, is deemed to be the Commissioner's public notice of the plan and application for purposes of Finance Code §62.353.

(f) Request for Hearing; Deadline to Protest. Any interested person desiring to protest the plan and application or otherwise request a hearing on the plan and application must file a written protest with the Department within 10 days from the date the public notice was made as provided by subsection (e) of this section, otherwise any right or opportunity to protest or have a hearing on the application under Finance Code §62.353 is deemed waived.

(g) Hearing. If a hearing is required, the Commissioner will set a hearing on the plan and application within 60 days after the date the protest or request for hearing and the required fee are received, unless the Commissioner determines that the provisions set forth in §60.142 of this title (relating to Exemption for Supervisory Merger) apply, and the merger is designated as a supervisory merger for purposes of Finance Code §62.353(e). The hearing is governed by the procedural requirements concerning contested cases set forth in Government Code Chapter 2001 and Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Time of Decision. To the extent a hearing on the plan and application is required, the Commissioner will render a decision within 30 days after the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. If a hearing on the plan and application is not required, the Commissioner will render a decision within 30 days after the time period for requesting a hearing on the plan and application lapsed as provided by subsection (f) of this section, unless the Commissioner establishes a longer time period, with written notice to the applicant.

(i) Transactions Involving Financial Institutions in Other States or Territories. To the extent permitted by the laws of the state or territory in question, and subject to the requirements of this section, a savings association may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state or territory. Each such application must include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the Commissioner that all state or territorial regulatory requirements have been satisfied. The Commissioner will not approve such an application unless the Commissioner determines that all requirements of this section have been met, and all applicable requirements of the laws of the state or territory in question have been met.

§60.142. Exemption for Supervisory Merger.

(a) The Commissioner may designate a transaction under §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association) as a supervisory merger when:

(1) the Commissioner has placed one or more of the savings associations involved under voluntary supervisory control or under conservatorship pursuant to the Texas Savings and Loan Act;

(2) the Commissioner has determined that one or more of the savings associations involved is in an unsafe condition; or

(3) the FDIC has determined, and certified to the Commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition means that the savings association is (or savings associations are) insolvent or in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation(s) of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its capital; or that the savings association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the Commissioner, or any agreement between the savings association and the Commissioner; or that the savings association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings association by the Commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings association which the Commissioner and the board agree place the savings association in an unsafe condition.

(c) Effect of Exemption. If the Commissioner designates the transaction as a supervisory merger, the application and all information relating to the application are deemed confidential. As a result, the requirements of §60.141 of this title (relating to Reorganization, Merger, Consolidation or Purchase and Assumption Transaction - Resulting in a Savings Association), concerning public notice of the application, and a hearing on the application, are not applicable.

§60.143. Reorganization, Merger or Conversion by a Savings Association to Another Financial Institution Charter.

(a) A savings association is authorized to reorganize, merge, or convert into another type of financial institution charter subject to applicable law and regulation relating to the type of charter which will be held by the resulting institution.

(b) The Commissioner must be given written notice of the intention of the savings association to reorganize, merge, or convert no less than 30 days prior to the proposed transaction.

(c) The savings association must file with the Commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board, shareholders, or members that relate to the transaction, including those reflecting approval to engage in the transaction by a majority vote of the shareholders of members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and

(4) evidence to ensure that no undue harm will be caused to the public interest or to any other existing financial institution.

(d) The Commissioner is deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter at the time the Department notifies the savings association that the filing made in accordance with this section is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which must be filed with the Commissioner, the savings association receiving the new charter ceases to exist as a savings association and will no longer be subject to the jurisdiction of the Commissioner. The foregoing notwithstanding, the Commissioner must receive the original charter certificate or a certified affidavit of lost certificate in order to be released from the requirement to pay annual assessments as provided by §60.251 of this title (relating to Annual Assessments.)

§60.144. Conversion into a Savings Association.

(a) The Commissioner may authorize any financial institution to convert itself into a savings association in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) Plan and Application. In order to obtain such authorization, the converting institution's board must approve and authorize the filing of a conversion plan and application. Upon approval of the conversion plan, the plan must be approved by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings association will be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, must be filed with the Commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a savings association, the members or stockholders must also vote on the directors of the savings association. The proposed directors must execute an application for savings association charter as provided by Finance Code Chapter 62, Subchapter A, and §60.121 of this title (relating to Savings Association Charter).

(c) Review by Commissioner; Approval. The Commissioner, on receipt of the application and verified copy of the minutes, will conduct an examination of the financial institution seeking conversion. Following the examination, the Commissioner will approve the conversion if the Commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of Finance Code Chapter 62, Subchapter A, and §60.121 of this title.

§60.145. Mutual to Stock Conversion.

(a) The application for mutual to stock conversion must include:

- (1) a plan of conversion;
 - (2) amendments to the savings association's certificate of formation and bylaws;
 - (3) a copy of the proxy and soliciting materials to be used;
- and
- (4) such other information the Commissioner may require.

(b) The plan of conversion must provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings association be offered to persons with subscription rights and management, in that order, and that any remaining shares will be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering;

(3) that a direct community offering by the converting savings association will give a preference to natural persons residing in the counties in which the savings association has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion will be a uniform price determined in accordance with paragraph (1) of this subsection, and specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings association members approve the plan of conversion;

(6) that each savings accountholder of the converting savings association will receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings association;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion are reasonable;

(9) that the converting savings association may not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings association;

(10) that the proxies held with respect to voting rights in the saving association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder will be the total of the deposit balances in the accountholder's savings accounts in the converting savings association as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than \$50 (or any lesser amounts) will not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion must be adopted by not less than two-thirds of the board.

(d) Public Notice. An application for mutual to stock conversion is deemed to be a complete application at the time the Department notifies the applicant that application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). Upon receipt of such notice, the proposed incorporators must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in each county in which the savings association has an office, and must prominently post the notice in each of its offices.

(e) Following approval of the application for conversion by the Commissioner, the plan of conversion must be submitted to the members at an annual or special meeting and the plan must be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members.

(f) No offer to sell securities of a savings association pursuant to a plan of conversion may be made prior to Commissioner's approval of the:

(1) application for conversion;

(2) proxy statement; and

(3) offering circular.

(g) Within 45 days:

(1) of the date of the mailing of the subscription form, the subscription rights must be exercised;

(2) after the last day of the subscription period, the sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, must be completed.

(h) The converting savings association must pay interest at not less than the savings account interest rate on all amounts paid in cash or by check or money order to the savings association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings association until the conversion is completed or terminated.

(i) For the purpose of this rule, the public offering and a direct community offering is deemed to commence upon the declaration of effectiveness by the Commissioner of the final offering circular.

(j) The Commissioner may grant a written waiver from any requirement of this rule that is not otherwise required by statute.

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

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DIVISION 6. CHANGE OF CONTROL

7 TAC §§60.161 - 60.165

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: Chapter 62, Subchapter L; and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.161. Acquisition of a Savings Association.

The following procedures must be followed when a person desires to obtain control of a savings association (including change of control of a savings association holding company).

(1) No person other than the issuer may make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings association if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings association, unless such person has filed with the Com-

missioner all of the following information on an application form approved by the Commissioner and which application form is deemed by the Commissioner to be complete and has received a written order from the Commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if such applicant and any affiliate is an individual, or all individuals who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Such filing must contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulations, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the Commissioner;

(B) if the applicant is not an individual, the nature of its business operations for the past five years or for such lesser period as such applicant and any predecessors thereof have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there must be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare dividends to liquidate such savings associations, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings association's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings association in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the Commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the Commissioner.

(2) If the person required to file the information required by paragraph (1) of this section is a partnership, limited partnership, syndicate, trust, or other group, the Commissioner may require that the information must be given to:

(A) each partner of such partnership or limited partnership;

(B) each member of such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information required by paragraph (1) of this section is a corporation, the Commissioner may require that the information called for must be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings association may not be consummated until the Commissioner approves the application for acquisition of control. The application will be processed and considered in accordance with Finance Code §62.555 and §62.556. The Commissioner will render a decision within 60 days after the application is complete and has been accepted for filing as provided by §60.101 of this title (relating to Application Filing Requirements). The application will be denied if the Commissioner finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless the Commissioner also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the financial condition of any acquiring party might jeopardize the financial stability of the savings association being acquired;

(C) plans or proposals to liquidate or sell the savings association or its assets are not in the best interest of the savings association;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings association;

(E) the savings association will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings association or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings association has been evidenced;

(G) the applicant has not provided information pertinent to the application requested by the Commissioner; or

(H) the applicant is not acting in good faith.

§60.162. Notice and Hearing.

(a) Public Notice. An applicant timely requesting a hearing on the Commissioner's decision to deny the application must publish a public notice of the application as provided by §60.103 of this title (relating to Public Notice of Application), which must be published in the county where the savings association has its home office.

(b) Hearing. If a hearing is required, the Commissioner will set a hearing on the denial within 60 days after the date the request for a hearing on the denial was received. The hearing is governed by the procedural requirements concerning contested cases set forth in Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(c) Time of Decision. To the extent a hearing on the Commissioner's decision to deny the application is required, the Commissioner will render a decision within 30 days after the date the hearings officer issues his or her proposal for decision and the applicable time period for filing exceptions to the proposal for decision and replies to such exceptions has lapsed without the hearings officer amending the proposal for decision. Only then will the hearing be deemed to be closed for purposes of Finance Code §62.556.

§60.163. Retention of Control.

(a) The following conditions affecting any controlled savings association, regardless of when or how such control has been acquired, are grounds for the Commissioner to investigate, seek to enjoin, or set aside any change of control of a savings association, if the Commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings association, or other demonstration of untrustworthiness by the savings association, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings association; or

(2) the violation of any antitrust law of this state by the savings association, the holding company, or any affiliate.

(b) The Commissioner may require the submission of such information as necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) When the Commissioner determines reasonable cause exists to believe that a change of control may have taken place without prior approval, the Commissioner may call a hearing to determine whether there has been in fact a change of control. If the Commissioner finds by a preponderance of the evidence that such unauthorized

control exists, the Commissioner may, after notice and hearing, issue an order requiring immediate divestiture by certain persons of unapproved or indirect control, or the Commissioner may issue any other supervisory order the Commissioner deems appropriate.

§60.164. Abeyance of Other Applications.

When an application for approval of acquisition of control of a savings association has been received by the Commissioner and the savings association also has other applications on file with the Commissioner, such applications may, at the Commissioner's discretion, be held in abeyance until the change of control application has been disposed of.

§60.165. Exempt Transactions.

The following transactions are exempt from the application requirements of this division:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings association which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the Commissioner within 30 days and provided further that the acquiror may not retain such control for more than one year from the date on which such control was acquired. The Commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed three years, if the Commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection prevents such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same; and

(3) acquisition of additional stock of a savings association by any person who has held power to vote 25% or more of any class of voting stock in such savings association continuously for the three-year period preceding such acquisition, or has maintained control of the savings association continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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DIVISION 7. CAPITAL NOTES AND DEBENTURES

7 TAC §60.171

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.171. Capital Notes and Debentures.

(a) Approval Required. No savings association may issue and sell its capital notes or debentures without the prior written approval of the Commissioner. The Commissioner, in approving the issuance and sale, may impose any conditions the Commissioner determines necessary with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

(b) Requirements. A savings association may, by resolution of its board and with prior approval of the Commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings association, provided:

(1) the savings association provides adequate proof to the satisfaction of the Commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the Commissioner as to the need and utilization of such funds by the savings association in a profitable manner.

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DIVISION 8. HOLDING COMPANY APPLICATIONS

7 TAC §60.181

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.002(3); §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.181. Registration.

A holding company must apply and register with the Commissioner not later than the 90th day after the date the company becomes a hold-

ing company. The application must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner finds necessary and appropriate. On written request, the Commissioner may, in his or her sole discretion, extend the time within which a holding company is required to register and file the required information.

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DIVISION 9. SUBSIDIARY APPLICATIONS

7 TAC §60.191

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; §64.002(18) and (19); and §66.002(3).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.191. Subsidiary Application.

(a) In order to obtain approval for a subsidiary, the savings association must file with the Commissioner an application accompanied by the following information:

(1) an audited financial statement in the event of acquisition of an existing company;

(2) a certified board resolution of the board of the applying savings association approving the investment in the proposed subsidiary;

(3) a certified copy of the certificate of formation and by-laws of the proposed subsidiary;

(4) the acquisition terms, cost, or investment requirements of the savings association;

(5) projected operating statements of the proposed subsidiary for the first 3 years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent liability of the savings association and the proposed subsidiary;

(7) an outline of plans for operation of the proposed subsidiary;

(8) evidence that the proposed subsidiary will have adequate management and operating personnel with proper supervision by savings association management;

(9) plans for the safeguarding of assets of the proposed subsidiary;

(10) affidavits from all directors of a savings association and the proposed subsidiary fully disclosing any interest they may directly or indirectly have in the proposed subsidiary; and

(11) such other information or data as the Commissioner may require.

(b) The Commissioner may approve an investment in a subsidiary if the Commissioner finds that:

(1) the operation and condition of the savings association affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the subsidiary will be clearly distinguishable from those of the parent savings association; and

(4) the subsidiary is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings association.

(c) If the Commissioner finds that a savings association has abused or is abusing the authority to invest in a subsidiary, the Commissioner may exercise discretion in denying such savings association the right to future exercise thereof until such abuse or abuses have been corrected.

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SUBCHAPTER C. OPERATIONS

DIVISION 1. OFFICE LOCATIONS

7 TAC §§60.201 - 60.204

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §62.011.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.201. Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office.

(a) Approval Required. No savings association may establish, maintain, or relocate its home office, or an additional office as provided by §60.202 of this title (relating to Types of Additional Offices), without the prior written approval of the Commissioner, except as otherwise provided by §60.133 of this title (relating to Relocate Home or Additional Office).

(b) Ancillary Facilities. An authorized or approved office of a savings association is the place where the business of the savings association is conducted, and with the prior written consent of the Com-

missioner, may include facilities ancillary thereto for the extension of the savings association's services to the public. Any authorized or approved office of a savings association also means, with the prior written consent of the Commissioner, separate quarters or facilities to be used by the savings association for the purpose of performing service functions in the efficient conduct of its business.

(c) Notice of Home Office. All offices of a savings association which are located outside the county of its home office must display a sign which is suitable to advise the public of the type of additional office which is located therein and the location of the home office of such savings association.

(d) Closing an Office. Before closing an approved branch or other office, other than a temporary closure as provided by §60.203 of this title (relating to Temporary Closing of Additional Offices), or an emergency closure as provided by Finance Code §63.009, a savings association must comply with the notice requirements of federal law, and provide the Commissioner with a copy of the closing notice filed with the appropriate federal banking agency, if applicable, upon filing such notice. A savings association must provide the Commissioner with confirmation within 10 days after the actual closing date. Once closed, prior written approval from the Commissioner to operate a branch or other office is deemed revoked, and a savings association may not reopen the branch or other office without seeking new approval from the Commissioner.

(e) Activities Not Requiring an Approved Office. The following activities of a savings association, or any combination thereof, may be performed at a location other than the home or a branch office and such location does not constitute an "additional office" requiring notice to or the prior approval of the Commissioner for purposes of Finance Code §62.011:

(1) Automated or remote activities. A savings association may engage in limited banking activities through infrastructure and equipment by automated or remote means, including use of an automated teller machine (ATM), automated loan machine, automated device for receiving deposits (remote deposit capture), or other remote service unit.

(2) Loan production activities. A savings association may engage in loan production activities including taking loan applications, making a credit decision, accepting payments on loans, or managing or selling real estate owned by the institution in connection with such loans, unless such activity conflicts with applicable state or federal law.

(3) Administrative activities (administrative offices). A savings association may establish or maintain administrative offices to perform the internal operations of the institution, provided the savings association does not conduct banking activities.

(4) Advertising and marketing. A savings association may advertise and market itself to the public including soliciting deposits, providing information about the financial products of the savings association, and assisting persons in completing application forms to open a deposit account, provided the savings association does not conduct banking activities.

(5) Trade association participation; community events and engagement. A savings association may participate in trade association events promoting the banking or financial services industry broadly. A savings association may also host, attend, or otherwise participate in community events, provided the savings association does not conduct banking activities at such event.

(6) Information technology (IT) infrastructure. A savings association may operate information technology infrastructure or equipment including the placement of IT infrastructure in a data

center, the hosting or processing of a website or data by a third-party IT service provider, or such other physical presence tied to the IT infrastructure of the savings association.

(7) Ancillary customer service activities. A savings association may engage in customer service activities ancillary to its banking functions including relating to accessing or using its website or a software application.

§60.202. Types of Additional Offices.

The following types of additional offices may be established and maintained by a savings association:

(1) branch offices at which the savings association may transact any business that could be done in the home office;

(2) mobile facilities at which the savings association may transact any business of the institution which could be done in the home office (a detailed record of the transactions at such facility must be maintained); and

(3) courier/messenger service to transport items relevant to the savings associations' transactions with its customers, including courier services between financial institutions.

§60.203. Temporary Closing of Additional Offices.

In the event a savings association closes any additional office of any type on a temporary basis, such office must be reopened within 12 months or less, unless otherwise extended by written authorization of the Commissioner. In the event such office is not reopened within the allotted 12-month period, or the longer period established by the Commissioner, if applicable, the Commissioner's approval to establish such office for purposes of §60.201 of this title (relating to Approval of Offices Required; Closing an Office; Activities Not Requiring an Approved Office) is deemed revoked. Written notice of any temporary closing must be provided to the Commissioner no later than 10 days after such closing, and the office may not reopen until the Commissioner receives written notification at least 10 days before such reopening.

§60.204. Operation of a Mobile Facility.

Mobile facilities must be operated consistent with the following requirements:

(1) Such facility may be operated only at locations approved by the Commissioner, each of which must at all times be appropriately identified at the site and on the facility and located within 100 miles of the savings association's home office or a branch office.

(2) The savings association must maintain adequate safeguards for the security of the mobile facility. The Commissioner may require additional safeguards, if in the Commissioner's sole discretion, existing safeguards are inadequate, with written notice to the savings association.

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DIVISION 2. BOOKS, RECORDS,
ACCOUNTING PRACTICES, FINANCIAL
STATEMENTS, AND RESERVES

7 TAC §§60.221 - 60.227

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.221 is also proposed under the authority of, and to implement, Finance Code: §66.002(4) and (6); and §66.053. 7 TAC §60.222 is also proposed under the authority of, and to implement, Finance Code §66.002(5). 7 TAC §60.223 is also proposed under the authority of, and to implement, Finance Code: §66.002(8); and §66.051. 7 TAC §60.225 is also proposed under the authority of, and to implement, Finance Code §66.002(10). 7 TAC §60.226 is also proposed under the authority of, and to implement, Finance Code §66.051. 7 TAC §75.227 is also proposed under the authority of, and to implement, Finance Code: §62.051(b)(2); §62.007(b)(3); §62.010; §62.106; and §62.151(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.221. Books and Records.

A savings association must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A savings association may store original records or copies of records at a location other than the home office; however, a savings association must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings association by the Commissioner at the home office. A savings association may maintain copies of its books and records in an electronic, digital, or magnetic format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

§60.222. Accounting Practices.

A savings association must use such forms and observe such accounting principles and practices as the Commissioner may require from time to time.

§60.223. Financial Statements; Annual Reports; Audits.

For safety and soundness purposes, no later than 90 days after its fiscal year end, each savings association is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3, with the exception of any matters specifically addressed by this section, the Texas Savings and Loan Act, or the rules (regulations) adopted thereunder.

§60.224. Misdescription of Transactions.

A savings association may not, either directly or indirectly, knowingly make any entry on its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction.

§60.225. Charging Off or Setting Up Reserves Against Bad Debts.

The Commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with GAAP.

§60.226. Examinations.

(a) The Commissioner will examine each savings association once in each year, or more frequently if the Commissioner determines that the condition of the savings association justifies more frequent attention to enforce the Texas Savings and Loan Act. The Commissioner may defer an examination for not more than six months if the Commissioner considers the deferment appropriate to the efficient enforcement of the Texas Savings and Loan Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving association's appropriate federal banking agency. The Commissioner may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

§60.227. Bylaws.

(a) The bylaws of a savings association must contain sufficient provisions to govern the institution in accordance with the Texas Savings and Loan Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board. Bylaw amendments may not take effect before being filed with and approved by the Commissioner in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

(b) A savings association is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the savings association.

(c) Other optional bylaws may be adopted by a savings association with the approval of the Commissioner obtained in accordance with §60.123 of this title (relating to Certificate of Formation or Bylaws Amendments).

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DIVISION 3. CAPITAL AND CAPITAL
OBLIGATIONS

7 TAC §§60.231 - 60.234

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. 7 TAC §60.231 and §60.232 are proposed under the authority of, and to implement, Finance Code: §62.002(b); §62.003(b); §62.052(c); §62.152; and §66.002(1) and (2). 7 TAC §60.233 is also proposed under the authority of, and to implement, Finance Code Chapter 66, Subchapter C. 7 TAC §60.234 is also proposed under the authority of, and to implement, Finance Code §63.004(d).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.231. Capital Requirements.

(a) Unless the context clearly indicates otherwise, when used in this division, "capital" for a savings association includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings association's capital under GAAP) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings association must maintain capital at levels that are required for institutions whose accounts are insured by the FDIC.

§60.232. Increase or Decrease of Minimum Capital Requirements.

(a) The Commissioner may increase or decrease the minimum capital requirement set forth in this chapter upon written request by a savings association or by supervisory directive if the Commissioner determines that:

(1) the savings association's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings association, a violation of any provision of the certificate of formation or bylaws of the savings association, or a violation of any law, rule, or supervisory action applicable to the savings association or any condition that the Commissioner has imposed on the savings association by written order or agreement;

(2) the savings association is well managed. In determining whether the savings association is well managed, the Commissioner may consider:

(A) management's record of operating the savings association;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings association in changing economic conditions; and

(E) such other factors as the Commissioner may deem necessary to properly evaluate the quality of the savings association's management; and

(3) the savings association has submitted a plan acceptable to the Commissioner for restoring capital within a reasonable period of time. Such plan must describe the means and schedule by which capital will be increased. The plan must also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and

payment for services or products furnished by affiliated persons. The plan must provide for improvement in the savings association's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner to be reasonably feasible will not be acceptable. The Commissioner may require modification of the savings association's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Progress Reports. Any savings association which receives an increase or decrease of its minimum capital requirement from the Commissioner must file quarterly progress reports regarding compliance with its capital plan. The Commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the savings association fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings association undergoes a change of control or a material change in management that was not approved by the Commissioner;

(4) the savings association engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings association engages in unsafe and unsound practices, violates any provision of its certificate of formation or bylaws, or violates any law, rule, or supervisory order applicable to the savings association or any condition that the Commissioner has imposed upon the savings association by written order or agreement; or

(7) the savings association fails to submit the reports required by this section.

§60.233. Business Plans.

(a) All savings associations whose operations are considered by the Commissioner unsafe or unsound or that have total capital less than the amount required under §60.231 of this title (relating to Capital Requirements) or §60.232 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least 1 year but may be for so long as the Commissioner may require.

(b) The savings association's business plan will be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board, at least annually.

§60.234. Joint Issuance of Capital Obligations.

Joint Issuance of Capital Obligations. On the same terms and conditions as stated in §60.171 of this title (relating to Capital Notes and Debentures), a savings association may, by resolution of its board and with prior approval of the Commissioner, join other savings associations in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations.

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DIVISION 4. HOLDING COMPANIES

7 TAC §§60.241 - 60.245

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §66.051(a); §66.053(2); §66.103(a); and §66.104(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.241. Reports.

Each holding company and each subsidiary of a holding company, other than a savings association, must file with the Commissioner reports required by the Commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner may require. A holding company must file with the Commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available.

§60.242. Books and Records.

Each holding company must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.243. Examinations.

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner may prescribe. The holding company or the savings association must pay the cost of an examination. The confidentiality provisions of Finance Code §89.052 apply to an examination performed in accordance with this section, however, the Commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

§60.244. Agent for Service of Process.

The Commissioner may require a holding company or a person other than a corporation connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§60.245. Release from Registration.

The Commissioner at any time, on the Commissioner's own motion or on written request, may release a registered holding company from a registration made by the company if the Commissioner determines that the company no longer controls a savings association. If released, the savings association associated with the holding company must maintain the books and records of such holding company.

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

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DIVISION 5. ASSESSMENTS AND FEES

7 TAC §60.251, §60.252

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations; §16.003(c), providing that the department may set the amount of fees, penalties, charges, and revenues as necessary for the purpose of carrying out the functions of the department; and §61.007, requiring the commission to adopt rules setting the amount of fees the commissioner charges, including fees relating to the supervision and examination of savings banks. 7 TAC §60.252 is also proposed under the authority of, and to implement, Finance Code §66.052(a).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.251. Annual Assessments.

(a) Annual assessment. All savings associations chartered under the laws of the state and all foreign savings associations (as defined by the Texas Savings and Loan Act in defining "foreign association") holding a certificate of authority to do business in this state must pay to the department an annual assessment fee in an amount determined by the Commissioner as provided by subsection (c) of this section in accordance with the rate requirements set by the Finance Commission of Texas, and subject to the maximum assessment rates established by subsection (d) of this section. The Department will maintain on its website information concerning current rate requirements.

(b) Payment of Assessment. The annual assessment must be paid in quarterly installments. Upon receipt of a written invoice from the department, the savings association must pay the assessment fee by electronic/ACH payment, or by another method, if directed to do so by the Department.

(c) Determination of Assessment. The assessment will be determined based on the total assets of the savings association. The valu-

ation of assets will be determined as of the close of the calendar quarter immediately preceding the effective date of the assessment.

(d) Maximum Assessment Rates. The assessment rates set by the Finance Commission of Texas may not exceed the maximum rates established in the following rate schedule:

Figure: 7 TAC §60.251(d)

§60.252. Fee for Special Examination.

(a) A special examination is one that is conducted outside the context of a savings association's annual examination and includes, but is not limited to, examinations of a savings association holding company, and interstate branches of savings associations in Texas as the host state. The savings association or other regulated entity that is the subject of the special examination is subject to a fee and liable for the Department's costs as provided by this section in order to recoup the salary expense of the examiner(s) plus a proportionate share of Department overhead allocable to the special examination, and the actual costs by the examiner in conducting the special examination.

(b) The fee for a special examination under this section will be calculated at a rate not to exceed \$75 per examiner per hour. The entity that is the subject of the examination must also pay to the Department an amount for actual travel expenses and costs incurred by the Department's examiner(s), including mileage, public transportation, food, and lodging. The Commissioner, in his or her sole discretion, may lower the applicable rate for the examination fee or waive, in whole or in part, any fees or costs chargeable in accordance with this section.

(c) In connection with an examination under this section, the regulated entity or other legally responsible party must pay the examination fee and costs incurred as provided by this section.

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DIVISION 6. COMPLAINT PROCEDURES

7 TAC §60.261

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §13.011(a); and Chapter 66, Subchapter C.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.261. Savings Association Complaint Notices.

(a) Definitions.

(1) Privacy notice means any notice which a state savings association gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings associations must use the following notice: The (name of state savings association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone: (877) 276-5550, Fax: (512) 936-2003, or through the Department's website at www.sml.texas.gov.

(2) A required notice must be included in each privacy notice that a state savings association sends out.

(3) Regardless of whether a savings association is required by any state or federal law to give privacy notices, each savings association must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings association conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings association must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings association that is accessible by the public and either used to conduct banking activities or from which the savings association advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page.

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SUBCHAPTER D. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

DIVISION 1. AUTHORIZED LOANS AND INVESTMENTS

7 TAC §§60.301 - 60.309

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code: §64.001; and §64.002. 7 TAC §60.303 is also proposed under the authority of, and to implement, Finance Code Chapter 64, Subchapter E.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.301. Definitions.

As used in this division, the following words and terms are assigned the following meanings, unless the context clearly indicates otherwise.

(1) Commercial real estate--Land on which structures or improvements do not qualify the property as residential real estate are located.

(2) Home--A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

(3) Home improvement loan--Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

(4) Interim construction loan--A loan made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans.

(5) Manufactured home--A structure, transportable in one or more sections, which in the traveling mode is 8 feet or more in width or and 40 feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(6) Personal property--Tangible and intangible property that is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

(7) Residential real estate--Land on which a house, a home, or an apartment house is located, including combinations of farm residences and commercial farm real estate.

(8) Unimproved real estate--Land which has no substantial improvements or utilities. All other real estate will be considered either residential real estate or commercial real estate.

§60.302. Loans Authorized.

(a) A savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans or participations subject to the requirements of the Texas Savings and Loan Act, and this subchapter, including:

(1) residential real estate loans, including loans on the security of leasehold interests in residential real estate;

(2) home improvement loans;

(3) manufactured home loans,;

(4) interim construction loans;

(5) other real estate loans, including loans on the security of leasehold interest in real estate;

(6) personal property loans;

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate;

(8) non-real estate commercial loans;

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans; and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof.

(b) Parity. A savings association may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings association domiciled in this state, so long as for each such transaction the savings association complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

§60.303. Local Service Area Investment Requirement.

(a) A savings association must ensure compliance with the local service area investment requirements set forth in Finance Code Chapter 64, Subchapter E.

(b) Local Service Area. A savings association's "local service area" means the geographical area designated by the Commissioner under Finance Code §64.082. A savings association's local service area is deemed to include any zip code for which any portion of the zip code is located within the 50-mile radius of the home office or any branch office of the savings association and is deemed to be removed from the local service area at the time such office permanently closes.

(c) Categories of Assets and Investments. The following categories of assets and investments constitute loan and investments for purposes of Finance Code §64.081:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans secured by real estate located in the local service area;

(2) home improvement loans concerning real estate located in the local service area;

(3) interim residential construction loans concerning real estate located in the local service area;

(4) mortgage-backed securities collateralized by loans secured by real estate located in the savings association's local service area; and

(5) loans for community reinvestment purposes concerning a community located in the local service area.

(d) For purposes of identifying qualifying assets and investments under this section:

(1) Mortgage-backed securities includes mortgage-back bonds, mortgage pass-through securities, collateralized mortgage obligations, and such other securities determined by the Commissioner to be collateralized by first or second lien residential mortgages.

(2) It is the responsibility of the savings association to capture and maintain information and documentation to support a mortgage back security as being collateralized by loans secured by real estate located in the local service area.

(3) A qualifying loan or investment includes the loans sold by the savings association or any subsidiary (including finance subsidiaries) within the preceding 12 months that otherwise meet the requirements of this section.

(e) Any request by a savings association for a waiver under Finance Code §64.084 must be accompanied by a written explanation and justification as to why qualifying loans are not available in saving association's local service area.

§60.304. Unsecured Loans.

(a) A savings association may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings association's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

§60.305. Loan Policies and Documentation.

(a) Policies. Each savings association must establish written policies approved by its board establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the savings association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board; take adequate account of concentration of credit risk; and are appropriate to the size of the savings association and the scope of its lending activities.

(b) Loan Documentation Standards. Loan documentation standards must be established and maintained to enable the savings association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings association may substitute and still address the safety and soundness concern:

(1) an application for the loan, signed and dated by the borrower or their agent (and if the borrower is a corporation, a board resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or their agent, or a copy of the executed contract, disclosing the actual price at which the

security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, and any conditions of approval;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon their completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees, and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings association);

(8) the original mortgage, deed of trust, or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is located and naming the savings association as a co-insured, as its interest may appear;

(11) for real estate loans, an appraisal or evaluation completed in accordance with the requirements of 12 C.F.R. §323.1, et seq.;

(12) for personal property loans, a detailed explanation of how the savings association arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Title (Finance Code §301.001 et seq.).

(c) Unsecured Loans. Documentation guidelines for unsecured loans under this chapter would generally include the documents in subsection (b)(1) and (3) - (7) of this section.

(d) Loan documentation which meets the documentation requirements of the applicable agency meets the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof.

(e) Closing Agent. A savings association may designate as escrow agent an attorney or a title company, either of which must be duly licensed in the state where the transaction is closed. However, where an escrow agent is used, all original documents must be forwarded to the savings association within 5 business days after closing, or immediately after recording, for those documents which require filing of record.

(f) Permanent Loan File Requirements.

(1) Loan documentation must be in the possession of the savings association or an escrow agent designated by the savings association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records must be placed in one permanent loan file immediately upon receipt by the savings association.

(2) The permanent loan file required by this section must be located at an office of the savings association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3) The permanent loan file must contain evidence that the savings association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings association's interest therein. This requirement does not apply to loan participations purchased by the savings association.

(4) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw must be part of the permanent file.

(5) When a savings association purchases whole loans or participations in loans, it must cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement must be a part of the permanent file. The savings association must obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(g) The records of the savings association must reflect that the board has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings association. Loans originating in branch offices, loan offices, or agencies must be approved in the same manner as loans originating in the principal office.

(h) A savings association must maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

§60.306. Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.

All transactions, including loans, involving officers, directors, affiliated persons, controlling persons or employees are subject to the requirements of Federal Reserve Board Regulations O and W, which sections are hereby incorporated by reference. The Department will monitor and enforce compliance with such provisions.

§60.307. Letters of Credit.

A savings association may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements:

(1) The savings association must maintain a letter of credit register containing name of customer, address, amount of credit extended, and identifying number.

(2) Each letter of credit must conspicuously state that it is a letter of credit or must be conspicuously entitled as such.

(3) The savings association's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings association's obligation to pay arises only upon presentation of a draft and other documents as specified in the letter of credit and there is no obligation on the part of the savings association to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings association must obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) Each letter of credit's terms is subject to the limitations and documentation requirements to the same extent as if it were a loan made under this chapter.

(7) An appropriate fee may be collected for each letter of credit issued.

§60.308. Investment in Securities.

(a) A savings association is deemed to have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the FDIC; in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the FDIC; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings association's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state; and in such other securities or obligations approved by the Commissioner.

(b) A savings association investing in securities under this section must insure that the securities are delivered to the savings association, or for the savings association's account to a custodial agent or trustee designated by the savings association, within 3 business days after paying for or becoming obligated to pay for the securities. The savings association may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the FDIC, any financial institution legally exercising

trust powers and the accounts of which are insured by the Federal Deposit Insurance Corporation, or such other trust company approved in advance by the Commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings association must ensure that it receives a custodial or trust receipt for the securities within 3 business days of the delivery of the securities.

(c) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes, or other securities of any affiliated person without the prior written approval of the Commissioner.

(d) No savings association or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings association.

(e) Investments in equity securities.

(1) A savings association or any service corporation, operating subsidiary, or finance subsidiary of a savings association may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings association may invest in stock or equity securities unless the securities are eligible investments for federal associations.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings association.

(f) A savings association may be a member of the Federal Home Loan Bank System and/or Federal Reserve System and is specifically authorized to invest in such Federal Home Loan Bank and Federal Reserve Bank stock.

§60.309. Investment in Banking Premises and Other Real Estate Owned.

(a) A savings association may not, without prior written consent of the Commissioner, invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) A savings association may not acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association, or for the use of the savings association in future expansion of its banking facilities.

(c) Real estate acquired for the future expansion of a savings association's facilities not improved and occupied as banking facilities within 5 years from the date of its acquisition must be sold or otherwise disposed of. Existing bank facilities must be sold or otherwise disposed of within 5 years of the date the real estate ceases to be used for banking purposes. The Commissioner may, for good cause shown, grant an extension of time for the sale or disposition of the real estate, as described in this subsection.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings association may be held by a savings association for no more than 5 years, unless the Commissioner extends in writing the holding period for such property.

(e) Subject to subsection (f) of this section, when real estate is acquired in accordance with subsection (d) of this section, a savings association must substantiate the market value of the real estate by obtaining an appraisal within 90 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the real estate is \$500,000 or less. The Commissioner may, for good cause shown, grant an extension of time for obtaining an appraisal or evaluation (as appropriate), as described in this subsection.

(f) An additional appraisal or evaluation is not required when a savings association acquires real estate in accordance with subsection (d) of this section, if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the real estate and the appraisal or evaluation is less than 1 year old.

(g) An evaluation must be made on all real estate acquired in accordance with subsection (d) of this section at least once a year. An appraisal must be made at least once every 3 years on real estate with a recorded book value in excess of \$500,000.

(h) Notwithstanding any other provision of this section, the Commissioner may require an appraisal of real estate if the Commissioner considers an appraisal necessary to address safety and soundness concerns.

(i) An appraisal or evaluation made in accordance with this section must be performed in accordance with the standards described by the FDIC in 12 C.F.R., Part 323, Subpart A or the Federal Reserve System in 12 C.F.R., Part 225, Subpart G, as applicable.

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

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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



DIVISION 2. SUBSIDIARIES

7 TAC §§60.321, 60.323 - 60.326

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations. This proposal is also made under the authority of, and to implement, Finance Code §64.002(18) - (20).

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.321. Investment in and Divestiture of Subsidiaries.

(a) A savings association may, only after prior written approval of the Commissioner, invest in a subsidiary.

(b) Subsequent to obtaining approval for its initial investment and activity, a subsidiary may not engage in additional or substitute activities without the prior written approval of the Commissioner.

(c) A savings association may, with prior written approval of the Commissioner, divest itself of a subsidiary or merge or consolidate

the subsidiary with another company if the Commissioner finds that the terms and conditions of the transaction are in the best interests of the savings association.

§60.323. Authorized Subsidiary Investments.

(a) Activities of a subsidiary must consist of one or more of the following:

- (1) loan origination, purchasing, selling, and servicing;
- (2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;
- (3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);
- (4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;
- (5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;
- (6) maintenance and management of rental real estate;
- (7) serving as real estate brokers;
- (8) serving as insurance broker or agent;
- (9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;
- (10) serving in the capacity of trustee under deeds of trust or escrow agent;
- (11) preparation of state and federal tax returns for the savings association's accountholders and/or borrowers;
- (12) acquisition, maintenance, and management of real estate to be used for savings association offices and related facilities;
- (13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;
- (14) investing in venture capital through small business investment corporations; and
- (15) other activities which may be approved by the Commissioner.

(b) A subsidiary may not, without prior approval of the Commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A subsidiary may not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, and may not perform any duties for the savings association other than those specifically authorized in this section.

(d) The savings association must maintain the originals of all documents relating to the activities of its subsidiaries that do not require prior approval by the Commissioner, which documents must be made available at all times to state and federal supervisory authorities for examination and review.

§60.324. Subsidiary Operations.

(a) The savings association must obtain prior written approval of the Commissioner for the establishment and location of the home office, and any branch office, agency office, or any other office or facility of the subsidiary, and for any change of name of the subsidiary.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments must be furnished to the savings association within 30 days from date of execution.

(c) The subsidiary must furnish, at the expense of the subsidiary or parent savings association or its holding company, an independent appraiser's report or other expert opinion as determined to be necessary by the Commissioner for the purpose of establishing the value of any investments made by the subsidiary.

(d) Each subsidiary must maintain fidelity bond coverage with an acceptable bonding company in an amount that adequately protects the subsidiary from such loss. Coverage as an additional insured entity under a fidelity bond of the parent savings association or its holding company may satisfy this requirement.

(e) All directors of the savings association and subsidiary must furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

(f) Each subsidiary must maintain books and records as may be prescribed by the Commissioner. The records must be created and maintained in accordance with the requirements of §60.221 of this title (relating to Books and Records), pertaining to savings associations.

§60.325. Subsidiary Investment and Debt Limitation.

Investment in subsidiaries is deemed to include investment in the subsidiary's capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and may not, in the aggregate, exceed 10% of the savings association's total assets without prior approval.

§60.326. Operating Subsidiaries.

A savings association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings association, operating subsidiary investment is not limited by the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §60.325 of this title (relating to Subsidiary Investment and Debt Limitation). Notwithstanding this exclusion, all other provisions of this chapter applicable to a subsidiary apply equally to an operating subsidiary.

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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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



DIVISION 3. SAVINGS AND DEPOSITS

7 TAC §60.331

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations; and §59.310, requiring the commission to adopt rules to implement Finance Code Chapter 59, Subchapter D. This proposal is also made under the authority of, and to implement Finance Code Chapter 59, Subchapter D.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§60.331. User Safety at Unmanned Teller Machines.

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code §59.301, have the same meanings assigned by such section.

(b) Measurement of Candle Foot Power. For purposes of measuring compliance with the Finance Code §59.307, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or dust storm, or other similar condition.

(c) Leased premises.

(1) Noncompliance by Landlord. Pursuant to the Finance Code, §59.306, the landlord or owner of property is required to comply with the safety procedures of the Finance Code, Chapter 59, Subchapter D, if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the unmanned teller machine. If an owner or operator of an unmanned teller machine on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator must notify the landlord in writing of the requirements of the Finance Code Chapter 59, Subchapter D, and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the Finance Code Chapter 59, Subchapter D, by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Finance Code Chapter 59, Subchapter D, which may be enforced by the Texas Attorney General.

(d) Safety Evaluations.

(1) The owner or operator of an unmanned teller machine must evaluate the safety of each machine on a periodic basis no less frequently than annually.

(2) The scope of the safety evaluation must include, at a minimum, the factors identified in Finance Code §59.308.

(3) The owner or operator of the unmanned teller machine may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an unmanned teller machine is not controlled by the owner or operator of the machine.

(e) Notice. An issuer of access devices must furnish its customers with a notice of basic safety precautions that each customer should employ while using an unmanned teller machine. The notice must be personally delivered or sent to each customer whose mailing address is in this state, according to records for the account to which the access device relates, and may be included with other disclosures related to the access device, including an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.). The notice may be delivered electronically if permissible under Texas Business & Commerce Code §322.008.

(1) When Notice is Required. The issuer must furnish the notice to its customer whenever an access device is issued or renewed.

If the issuer furnishes an access device to more than one customer on the same account, the issuer is not required to furnish the notice to more than one of the customers.

(2) Content of Notice. The notice of basic safety precautions required by this subsection may include recommendations or advice regarding:

(A) security at walk-up and drive-up unmanned teller machines, such as recommendations that the customer should:

(i) remain aware of surroundings and exercise caution when withdrawing funds;

(ii) inspect an unmanned teller machine before use for possible tampering, or for the presence of an unauthorized attachment that could capture information from the access device or the customer's personal identification number;

(iii) refrain from displaying cash and put it away as soon as the transaction is completed; and

(iv) wait to count cash until the customer is in the safety of a locked enclosure, such as a car or home;

(B) protection of the customer's code or personal identification number, such as a recommendation that the customer ensure no one can observe entry of the customer's code or personal identification number;

(C) safeguarding and protection of the customer's access device, such as a recommendation that the customer treat the access device as if it were cash, and if the access device has an embedded chip, that the customer keep the access device in a safety envelope to avoid undetected and unauthorized scanning;

(D) procedures for reporting a lost or stolen access device and for reporting a crime;

(E) reaction to suspicious circumstances, such as a recommendation that a customer who observes suspicious persons or circumstances, while approaching or using an unmanned teller machine, should not use the unmanned teller machine at that time or, if the customer is in the middle of a transaction, should cancel the transaction, take the access device, leave the area, and come back at another time, or use an unmanned teller machine at another location;

(F) safekeeping and secure disposition of unmanned teller machine receipts;

(G) the inadvisability of surrendering information about the customer's access device over the telephone or over the Internet, unless to a trusted merchant in a call or transaction initiated by the customer;

(H) protection against unmanned teller machine fraud, such as a recommendation that the customer promptly review the customer's monthly statement and compare unmanned teller machine receipts against the statement;

(I) protection against Internet fraud, such as a recommendation that the customer, if purchasing online with the access device, should end transactions by logging out of websites instead of just closing the web browser; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its unmanned teller machine customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all unmanned teller machines. The owner or operator must determine whether video surveillance or

unconnected video surveillance equipment should be installed at a particular unmanned teller machine site, based on the safety evaluation required under Finance Code §59.308. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) Unmanned Teller Machines Located in a Bank Vestibule. The provisions of the Finance Code Chapter 59, Subchapter D, and this section are applicable to an unmanned teller machine located in a bank vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository must certify compliance with the Finance Code Chapter 59, Subchapter D, and this section on a basis no less frequently than annually.

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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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



CHAPTER 61. HEARINGS.

7 TAC §§61.1 - 61.3

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 61, as follows: §§61.1 - 61.3. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the de-

partment's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 61.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 61; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the depart-

ment proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 61; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§61.1. Hearings Officer.

§61.2. Rules of Procedure for Contested Hearings.

§61.3. Publication of Hearings Notice.

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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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

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For further information, please call: (512) 475-1535



CHAPTER 63. FEES AND CHARGES

7 TAC §§63.1 - 63.9, 63.11 - 63.13, 63.15

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department),

proposes to repeal all existing rules in 7 TAC Chapter 63, as follows: §§63.1 - 63.9, 63.11 - 63.13, and 63.15. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 63.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 63; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 63; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §63.1. *Fee for Charter Application.*
- §63.2. *Fee for Branch Office.*
- §63.3. *Fee for Mobile Facility.*
- §63.4. *Fee for Change of Name or of Location.*
- §63.5. *Fee for Special Examination or Audit.*
- §63.6. *Fee for Corporate Document Amendments.*
- §63.7. *Fee for Permission to Issue Capital Obligations.*
- §63.8. *Annual Fee to do Business.*
- §63.9. *Fee for Reorganization, Merger, and Consolidation.*
- §63.11. *Fee for Change of Control.*
- §63.12. *Fee for Subsidiaries.*
- §63.13. *Fee for Charter Application under §62.051.*
- §63.15. *Fees for Public Information Requests.*

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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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

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CHAPTER 64. BOOKS, RECORDS, ACCOUNTING PRACTICES, FINANCIAL STATEMENTS, RESERVES, NET WORTH, EXAMINATIONS, COMPLAINTS

7 TAC §§64.1 - 64.10

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 64, as follows: §§64.1 - 64.10. This proposal and the rules sections as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 64.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or

decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 64; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 64; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§64.1. *Location of Books and Records.*

§64.2. *Accounting Practices.*

§64.3. *Reproduction and Destruction of Records.*

§64.4. *Financial Statements; Annual Reports.*

§64.5. *Misdescription of Transactions.*

§64.6. *Charging Off or Setting Up Reserves Against Bad Debts.*

§64.7. *Capital Requirements.*

§64.8. *Waiver of Minimum Net Worth Requirements.*

§64.9. *Examinations.*

§64.10. *Savings and Loan Association Complaint Notices.*

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 24, 2023.

TRD-202301447

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 65. LOANS AND INVESTMENTS

7 TAC §§65.1 - 65.21, 65.23, 65.24

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 65, as follows: §§65.1 - 65.21, 65.23, and 65.24. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60.

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 65.

Changes Concerning Loan Requirements

The department's existing rules in Chapter 65, §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 establish various requirements for loans made by a savings association. While such rules, at one time, were appropriate, the department has determined that, given the requirements of federal law governing loan products, the rules are now overly prescriptive and should be repealed. As a result, the subject matter of such rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined

that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 65; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 65. The foregoing notwithstanding, the proposed rules related to Changes Concerning Loan Requirements do have the effect of repealing an existing rule requirement by purposely not proposing new rules to adopt the subject matter of existing 7 TAC §§65.4 - 65.10, 65.13 - 65.15, 65.20, and 65.23 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 65 into 7 TAC Chapter 60; (7) the proposed rules do not increase or

decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §65.1. *Types of Loans, Letters of Credit, and Investments Authorized.*
- §65.2. *Loans and Investments Made under Prior Rules and Purchases of Such Loans or Participations Therein.*
- §65.3. *Definitions.*
- §65.4. *Limitations on Aggregate Loans to One Borrower.*
- §65.5. *Residential Real Estate Loans.*
- §65.6. *Commercial Real Estate Loans.*
- §65.7. *Unimproved Real Estate Loans.*
- §65.8. *Personal Property Loans.*
- §65.9. *Oil and Gas Loans.*
- §65.10. *Wrap-around Real Estate Loans.*
- §65.11. *Loans to and Transactions with Officers, Directors, Affiliated Persons, and Employees.*
- §65.12. *Unsecured Loans.*
- §65.13. *Manufactured Home Loans.*
- §65.14. *Home Improvement Loans.*
- §65.15. *Acquisition, Development, and Construction Loans.*
- §65.16. *Interim Construction Loans.*
- §65.17. *Loan Policies and Documentation.*
- §65.18. *Letters of Credit.*
- §65.19. *Investments in Real Property.*
- §65.20. *Investments in Deferred Payment Obligations.*
- §65.21. *Investment in Securities.*

§65.23. *Restrictions on Loan Transactions with Third Person.*

§65.24. *Local Service Area Investment Requirement.*

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 24, 2023.

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Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 67. SAVINGS AND DEPOSIT ACCOUNTS

7 TAC §§67.1 - 67.3, 67.6 - 67.13, 67.15, 67.17

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 67, as follows: §§67.1 - 67.3, 67.6 - 67.13, 67.15, and 67.17. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 67.

Changes Concerning Savings and Deposit Accounts

The department's existing rules in Chapter 67, §§67.1 - 67.3, 67.6 - 67.13, and 67.15 establish various requirements concerning savings and deposit accounts of a savings association. The department has determined the rules are not necessary and should be repealed. As a result, the subject matter of such existing rules is not included in the department's related proposal concerning proposed new rules in 7 TAC Chapter 60, published elsewhere in this issue of the *Texas Register*.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 67; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 67. The foregoing notwithstanding, the proposed rules related to Changes Concerning Savings and Deposit Accounts do have the effect of repealing an existing

rule requirement by purposely not proposing new rules to adopt the subject matter of existing §§67.1 - 67.3, 67.6 - 67.13, and 67.15 in connection with the department's proposal to consolidate the subject matter of the existing rules in Chapter 67 into 7 TAC Chapter 60; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§67.1. *Distribution or Payment of Dividends or Interest.*

§67.2. *Account Balance to Which Dividends or Interest Are Applied.*

§67.3. *Method of Computing Dividends.*

§67.6. *Provisions for Distribution of Earnings on Other Than Regular Accounts.*

§67.7. *Notice Prior to Withdrawal.*

§67.8. *Deposit Accounts.*

§67.9. *Provisions for Issuance of Secured or Unsecured Capital Obligations.*

§67.10. *Joint Issuance of Capital Obligations.*

§67.11. *Required Average Daily Balance of Liquid Assets; Failure to Meet Requirement.*

§67.12. *NOW Accounts.*

§67.13. *Checking Accounts.*

§67.15. *Noninterest-Bearing Deposit Accounts.*

§67.17. *User Safety at Unmanned Teller Machines.*

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 24, 2023.

TRD-202301449

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 69. REORGANIZATION, MERGER, CONSOLIDATION, ACQUISITION, AND CONVERSION

7 TAC §§69.1 - 69.11

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 69, as follows: §§69.1 - 69.11. This proposal and the rules sections as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposal, if adopted, would repeal all existing rules in Chapter 69.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed

rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 69; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 69; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an

economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code: §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

- §69.1. *Filing of Plan.*
- §69.2. *Form and Content of Application.*
- §69.3. *Use of Approved Forms.*
- §69.4. *Notice and Hearing.*
- §69.5. *Publication.*
- §69.6. *Time of Decision.*
- §69.7. *Denial and Appeal.*
- §69.8. *Exemption for Supervisory Merger.*
- §69.9. *Designation as Supervisory Merger.*
- §69.10. *Acquisitions Involving Associations in Other States or Territories.*
- §69.11. *Conversion into another Financial Institution Charter.*

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 24, 2023.

TRD-202301450

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 71. CHANGE OF CONTROL

7 TAC §§71.1 - 71.8

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 71, as follows: §§71.1 - 71.8. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of

Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 71.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 71; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 71; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§71.1. Introduction.

§71.2. Definitions.

§71.3. Acquisition of an Association.

§71.4. Hearings.

§71.5. Retention of Control.

§71.6. Application for Approval of the Acquisition of Control of a Savings and Loan Association.

§71.7. Abeyance of Other Applications.

§71.8. Exempt Transactions.

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 24, 2023.

TRD-202301451

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



CHAPTER 73. SUBSIDIARY CORPORATIONS

7 TAC §§73.1 - 73.6

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal all existing rules in 7 TAC Chapter 73, as follows: §§73.1 - 73.6. This proposal and the rules as repealed by this proposal are referred to collectively as the "proposed rules."

Explanation of and Justification for the Rules

The existing rules under 7 TAC Chapter 52, Charter Applications, Chapter 53, Additional Offices, Chapter 57, Change of Office Location or Name, Chapter 61, Hearings, Chapter 63, Fees and Charges, Chapter 64, Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Complaints, Chapter 65, Loans and Investments, Chapter 67, Savings and Deposit Accounts, Chapter 69, Reorganization, Merger, Consolidation, Acquisition, and Conversion, Chapter 71, Change of Control, and Chapter 73, Subsidiary Corporations, implement Finance Code Title 3, Subtitle B, Savings and Loan Associations, and affect savings and loan associations (savings associations) regulated by the department.

Changes Concerning the Reorganization (Consolidation) of Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 into Chapter 60

When viewing the department's rules as a whole, it is somewhat difficult to discern which chapters affect savings associations regulated by the department. The department has determined it should reorganize Chapters 52, 53, 57, 61, 63 - 65, 67, 69, 71, and 73 by consolidating the subject matter of such chapters into one chapter - Chapter 60 - currently a vacant chapter in the department's rules. The proposed rules, if adopted, would repeal all existing rules in Chapter 73.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined

that for the first five-year period the proposed rules are in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rules. Antonia Antov has further determined that for the first five-year period the proposed rules are in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rules. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rules will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for each of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing or administering the proposed rules will be for the department's rules governing savings associations to be easier to locate by members of the public.

Probable Economic Costs to Persons Required to Comply with the Proposed Rules

Stephany Trotti, Deputy Commissioner and Director of Thrift Regulation for the department, has determined that for the first five years the proposed rules are in effect there are no substantial economic costs anticipated to persons required to comply with the proposed rules that are directly attributable to the proposed rules for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules does not require an increase or decrease in legislative appropriations to the agency; (4) the proposed rules do not require an increase or decrease in fees paid to the agency; (5) the proposed rules do not create a new regulation (rule requirement); (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules, if adopted, would repeal all existing rules in Chapter 73; however, in a related proposal published elsewhere in this issue of the *Texas Register*, the department proposes new rules in 7 TAC Chapter 60 patterned after the existing rules in Chapter 73; (7) the proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact

statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of Finance Code §11.302, authorizing the commission to adopt rules applicable to savings associations.

This proposal affects the statutes contained in Finance Code Title 3, Subtitle B, Savings and Loan Associations.

§73.1. *Investment in and Divestiture of Subsidiary Corporations.*

§73.2. *Application.*

§73.3. *Authorized Subsidiary Investments.*

§73.4. *Operations.*

§73.5. *Investment in Debt Limitation.*

§73.6. *Operating Subsidiaries.*

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 24, 2023.

TRD-202301452

Iain A. Berry

General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 475-1535



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 9. TALKING BOOK PROGRAM

13 TAC §9.1

The Texas State Library and Archives Commission (commission) proposes the repeal of 13 TAC §9.1, Definitions.

The proposed repeal is necessary because during its review of Chapter 9, Talking Book Program, under Government Code, §2001.039, the commission identified several needed amendments to update and clarify the definitions. The commission is proposing those amendments, which include putting the definitions in alphabetical order, in a separate notice also in this issue of the *Texas Register*.

FISCAL NOTE. Ann Minner, Director, Talking Book Program, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

PUBLIC BENEFIT/COST NOTE. Ms. Minner has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the rules governing participation in the Talking Book Program. There are no anticipated economic costs to persons required to comply with the proposal.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeal.

During the first five years that the proposed repeal would be in effect, the proposed repeal: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal an existing regulation that will be replaced by an improved regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Ann Minner, Director, Talking Book Program, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. The repeal is proposed under §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§9.1. Definitions.

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

Filed with the Office of the Secretary of State on April 17, 2023.

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5474



13 TAC §§9.1 - 9.9, 9.11 - 9.18

The Texas State Library and Archives Commission (commission) proposes new §9.1, Definitions; and amendments to §9.2, Administration; §9.3, Eligibility; §9.4, Application for Service; §9.5, Priority Service to Veterans; §9.6, Status of Users; §9.7, Playback Equipment; §9.8, Books and Magazines; §9.9, Availability of Materials; §9.11, Misuse of Service; §9.12, Notification of Potential Suspension; §9.13, Correction of Problem; §9.14, Suspension of Service; §9.15, Reinstatement of Service; §9.16, Termination of Service; §9.17, Transfer of Service; and §9.18, Re-activation of Accounts.

BACKGROUND. In November 2022, the commission approved posting a notice of intent to review the rules located at 13 TAC Chapter 9, Talking Book Program (program) under Government Code, §2001.039. This section requires state agencies to review its rules every four years and readopt, readopt with amendments, or repeal the current rules. The review must include, at a minimum, an assessment of whether the reasons for initially adopting the rules continue to exist.

Throughout the rule review, staff identified numerous amendments necessary to update, modernize, and clarify the rules, improve grammar and readability, and align the rules with best practices. While the reasons for initially adopting the rules continue to exist, the proposed amendments will modernize and improve the rules, making it easier for patrons and the public at large to understand the rules governing the program.

SECTION BY SECTION ANALYSIS. Multiple amendments are necessary to update and clarify the definitions in §9.1. Proposed amendments update the overall structure of definitions by consistently using the term "means" when defining a term and make non-substantive grammatical edits throughout. In addition, alphabetizing the definitions will make them easier to read and align with rule drafting best practices. Therefore, the commission finds it necessary to propose the repeal of §9.1, Definitions, which may also be found in this issue of the *Texas Register*, and propose new §9.1, Definitions, with more specific amendments to each defined term as explained below.

Several proposed new definitions are essentially the same as previously defined, with the only changes being minor and non-substantive. These include proposed new §9.1(3), "applicant agreement," §9.1(4), "audit," §9.1(8), "digital download service," §9.1(11), "equipment," and §9.1(12), "loan period." The proposed new definitions do not include previously defined terms "digital materials and services," as that term is not used within the chapter, or "account in good standing," as those requirements are proposed for addition to §9.3, Eligibility.

Proposed new §9.1(1) defines "active" as a borrower who has requested at least one book or magazine in the preceding 12-month period or signed on to the Braille and Audio Reading Download service at least once every six months.

Proposed new §9.1(2) defines "agency" as the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, pro-

grams, and property of the Texas State Library and Archives Commission. This definition is used in other chapters of the commission's rules and maintains consistency in rule language. The previously defined term "commission" is proposed for deletion as it is not necessary.

Proposed new §9.1(5) defines "books" as previously defined but proposes to change the word "computer" to "digital."

Proposed new §9.1(6) simplifies the definition of "borrower" by removing references to a person's activities in the program, adding "institution" to the definition, and updating the reference to the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(7), "certifying authority," updates the previously defined term of competent authority to reflect updates to the persons who may certify an individual for participation in the program following changes to the National Talking Book Program by the National Library Service for the Blind and Print Disabled. While this change was made in 2021, the commission has not yet updated its rule to reflect the change, despite accepting applications with the certifying authorities recognized by the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(9) and §9.1(10) provide updated definitions for "digital talking book" and "digital talking book machine," previously contained within the definition of "digital materials and services," with updated language to reflect current books and devices used by the program.

Proposed new §9.1(13) maintains the same definition for "magazines" but deletes the reference to "cassette" as the program no longer uses cassette tapes.

Proposed new §9.1(14) defines "National Library Service" by updating the reference to the National Library Service for the Blind and Print Disabled.

Proposed new §9.1(15) defines "program" as the Talking Book Program.

Proposed new §9.1(16) updates the definition of "veteran" by moving language from the previously defined term at §9.1(15), U.S. Armed Forces, and including that information in the definition, thereby eliminating the need to refer to another definition to define a term.

Proposed amendments to §9.2, Administration, update and improve the language and a citation to the United States Code provision regarding mailing free matter for blind and other handicapped persons.

Proposed amendments to §9.3, Eligibility, update language based on the updated definitions, delete text that is no longer necessary, and explain how an account may be maintained in good standing. This information was previously located within a defined term.

Proposed amendments to §9.4, Application for Service, make general language and readability improvements, update language based on the updated definitions, and delete text that is no longer necessary.

Proposed amendments to §9.5, Priority Service to Veterans, update the section title to "Priority for Veterans" and delete language that is no longer necessary.

Proposed amendments to §9.6, Status of Users, update the section title to "Status of Borrowers" and delete unnecessary language.

Proposed amendments to §9.7, Playback Equipment, update language based on the updated definitions and clarify what constitutes misuse of equipment in subparagraph (a)(10).

Proposed amendments to §9.8, Books and Magazines, update language based on the updated definitions and delete duplicative language found in other sections within the chapter.

Proposed amendments to §9.9, Availability of Materials, update language based on the updated definitions.

Proposed amendments to §9.11, Misuse of Service, update language based on the updated definitions.

Proposed amendments to §9.12, Notification of Potential Suspension, update language based on the updated definitions, improve readability, and add a citation to another section within the chapter.

Proposed amendments to §9.13, Correction of Problem, make minor wording changes and update language based on the updated definitions.

Proposed amendments to §9.14, Suspension of Service, update language based on the updated definitions and improve grammar and readability.

Proposed amendments to §9.15, Reinstatement of Service, update language based on the updated definitions and improve readability.

Proposed amendments to §9.16, Termination of Service, update and clarify language and clarify that a borrower who wishes to reinstate service after five years must file a new application.

Proposed amendments to §9.17, Transfer of Service, update language based on the updated definitions.

Proposed amendments to §9.18, Reactivation of Accounts, update language based on the updated definitions and improve readability.

FISCAL IMPACT. Ann Minner, Director, Talking Book Program, has determined that for each of the first five years the proposed amendments and new rule are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the new or amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Minner has determined that for each of the first five years the proposed amendments and new rule are in effect, the anticipated public benefit will be consistency and clarity in the rules governing participation in the Talking Book Program. There are no anticipated economic costs to persons required to comply with the proposed new rule or amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT. The proposal has no impact on local economy; therefore, no local employment impact statement under Government Code, §2001.022 is required.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments and new rule do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is

not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new rule will be in effect, the commission has determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;
4. The proposed rules will not require an increase or decrease in fees paid to the commission;
5. The proposed rules will not create a new regulation;
6. The proposed rules will not expand, limit, or repeal an existing regulation;
7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and
8. The proposed rules will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new rule do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new rule may be submitted to Ann Minner, Director, Talking Book Program, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register*.

STATUTORY AUTHORITY. The amendments and new rule are proposed under Government Code, §441.006, which directs the commission to govern the state library; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§9.1. Definitions.

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

(1) Active--means a borrower who has requested at least one book or magazine in the preceding 12-month period or signed on to the Braille and Audio Reading Download service at least once in a six-month period.

(2) Agency--means the Texas State Library and Archives Commission as an agency of the state of Texas, including the staff,

collections, archives, operations, programs, and property of the Texas State Library and Archives Commission.

(3) Applicant agreement--means a statement signed by each new applicant which states the borrower agrees to abide by the policies and procedures of the program.

(4) Audit--means a periodic inventory of equipment and/or books, as required by the National Library Service.

(5) Books--means Braille, large print, and audio publications, both physical hardcopy and digital download.

(6) Borrower--means an eligible person or institution that has registered with the Talking Book Program, part of the National Library Service for the Blind and Print Disabled's library network.

(7) Certifying authority--means a registered nurse, therapist, professional staff member of a hospital, doctor of medicine, doctor of osteopathy, ophthalmologist, optometrist, psychologist, or an individual representing a public or welfare agency or institution, such as an educator, social worker, case worker, counselor, rehabilitation teacher, certified reading specialist, dyslexia specialist, school psychologist, superintendent, or librarian.

(8) Digital download service--means a service provided or funded by either the National Library Service or the agency in which borrowers may download via the Internet audio and/or text computer files containing the contents of books and magazines.

(9) Digital talking book--means an audio or electronic Braille book produced by digital processes. Audio books are available in physical format or may be accessed through a digital download service. Braille books are accessed by digital download. These books are produced either by, or under the direction of, the National Library Service or the agency.

(10) Digital talking book machine--means a hardware device produced by the National Library Service and assigned to the commission for loan to borrowers. These may also include commercially-produced machines purchased by the commission for the purpose of loan to borrowers by the commission.

(11) Equipment--means any playback machine, accessories, and parts thereof that enable a borrower to listen to books and magazines.

(12) Loan period--means the specific period of time that an item is loaned to a borrower. The loan period begins when the agency assigns the book to the borrower and ends with the date the item is due back to the agency.

(13) Magazines--means periodical publications in Braille, large print, or digital format.

(14) National Library Service--means the National Library Service for the Blind and Print Disabled, a division of the Library of Congress that operates a free national library service that produces audio and Braille materials and distributes them to a cooperating network of regional and subregional libraries, to be circulated by postage-free mail to blind and physically disabled borrowers.

(15) Program--means the Talking Book Program.

(16) Veteran--means any person who has been honorably discharged or honorably released from the U.S. Armed Forces, meaning the U.S. Army, the U.S. Navy, the U.S. Marine Corps, the U.S. Air Force, the U.S. Coast Guard, and all armed auxiliary services of these branches.

§9.2. Administration.

The program provides library services [A statewide program of library service] for Texas residents with visual, physical, or reading disabilities. [who are blind, reading disabled, or physically handicapped] The program is operated and administered by the agency as part of the [Texas State Library, Talking Book Program for the Blind and Physically Handicapped. The] National Library Service, a program administered by [for the Blind and Physically Handicapped provides the Texas State Library with books in digital audio and Braille formats under regulations established by] the Library of Congress. The National Library Service [also] provides the agency books in audio and braille formats and reading equipment [Texas State Library with playback equipment for reading materials in audio format]. Postage for mailing materials and equipment to and from borrowers [users] is paid by the U.S. Government under the [special] provisions of 39 U.S.C.A. §3403, Matter for blind and other handicapped persons. [for "free matter for the blind and other physically handicapped persons."]

§9.3. Eligibility.

(a) The following persons are eligible for the program [service]:

(1) persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter of visual field is no greater than 20 degrees;

(2) persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing reading of standard printed material;

(3) persons certified by competent authority as unable to read or unable to use standard printed materials as a result of physical limitations;

(4) persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner; and

(5) persons certified by competent authority as having an allergy or other chemically-based reaction of sufficient severity as to prevent their handling of printed materials in a normal manner.

(b) The following persons are not eligible for service:

(1) persons who are illiterate without having an eligible disability; and

(2) persons who cannot read because of an intellectual disability or an intellectual development disorder. [s]

[(3) persons who are unable to read because they have a reading disability resulting from a non-organic dysfunction; and]

[(4) persons who cannot read because of conditions of non-organic dysfunction.]

(c) All borrowers [active users] will remain eligible for service, provided they:

(1) continue to meet the requirements for eligibility in the program;

(2) are active borrowers; and

(3) maintain their accounts in good standing, meaning: ["good standing."]

(A) borrower does not have excessive overdue, lost, or damaged materials and/or machines;

(B) borrower has not had account suspended for failure to follow procedures and policies as part of the membership agreement or for failure to cooperate with the agency; and

(C) borrower has not had service suspended for misuse of the service, as specified in §9.11 of this title (relating to Misuse of Service).

§9.4. Application for Service.

(a) Each potential borrower [user of the service] must submit an application for service by mail, email, or facsimile. Individuals [Users] reactivating accounts after five years discontinuance must submit [file] a new application. The application may be either the specific application issued by the agency [commission] or the generic application issued by the National Library Service. Any application must include the following to be accepted and processed:

(1) Signature from a certifying authority; [competent authority, as defined in §9.1(5) of this title (relating to Definitions). Because the signature must be an actual signature, as specified by the guidelines of the National Library Service, Texas State Library staff cannot accept applications that are photocopied, emailed, or have a stamped signature. Scanned or faxed applications are accepted.]

(2) Signed copy of the applicant agreement; and

(3) Alternative contact person, and if applicable, any person authorized to access and make decisions on the borrower's account. [user's account; and]

[(4) In the case of an applicant claiming to be a veteran, documentation that confirms the person as an honorably discharged or honorably released veteran of the U.S. Armed Forces.]

(b) Incomplete applications or applications submitted by applicants who [that] do not meet eligibility requirements will be returned to the applicants.

§9.5. Priority for [Service to] Veterans.

[(a)] As required by the National Library Service, veterans using the service are to be given priority whenever they request services. Veteran borrowers are subject to the same requirements as other borrowers[, namely they must meet eligibility requirements, must keep their accounts in good standing, must not misuse the service, etc].

[(b) Veteran borrowers are required to provide documentation to confirm that they are honorably discharged or honorably released from the U.S. Armed Forces. Veteran designation will be removed from a user's account if Texas State Library staff determines that the designation was inappropriately placed on the account.]

§9.6. Status of Users.

Borrowers must [Registered borrowers of the Texas State Library, Talking Book Program for the Blind and Physically Handicapped should] notify the agency [library] if any of the following circumstances occur [affecting the borrowers' accounts]:

(1) the borrower moves to a different address, acquires a different telephone number, or changes email address;

(2) the borrower desires to cancel service permanently or to place service on temporary hold for vacation, illness, or other reasons;

(3) the borrower moves temporarily or permanently to a location outside the State of Texas;

(4) the borrower desires to add a contact person or remove a contact person;

(5) the borrower wishes to designate a person to have access to the account and to act for the borrower;

(6) the borrower wishes to block a person from having access to the account or to request that that person no longer act for the borrower; or [and]

- (7) the borrower ceases to be eligible for service.

§9.7. *Playback Equipment.*

(a) The playback machine is a digital talking book machine. Equipment may be distributed by the National Library Service to the agency [eommission] for loan to borrowers, purchased by borrowers, or purchased by the agency [eommission] for loan to borrowers. All loaned equipment is subject to be returned to the agency [eommission] by borrowers when requested to do so. Damage or loss of equipment may cause a borrower's account to not be in good standing.

(1) Loan period. Playback equipment may be loaned to any borrower [active user] who continues to meet eligibility requirements for service and who maintains an account in good standing. Equipment and accessories are loaned free of charge. A borrower [An active user] may keep playback equipment for as long as the borrower [user] remains in the program and maintains active ["active"] status.

(2) Replacement of equipment. An active borrower [user] may request replacement of equipment if experiencing difficulty in using equipment or equipment does not operate properly. A borrower [User] may be required to return current equipment before replacement equipment is sent to borrower [user].

(3) Number of loaned equipment allowed. An active individual borrower [user] may not have more than one of each type of playback equipment on loan at any given time. An active institutional borrower [user] may have more than one of each type of playback equipment on loan at any given time if the institution serves a number of active individual borrowers [users] and machines are available for loan.

(4) Ownership of equipment and accessories. Some playback [Playbaek] equipment, amplifiers, headphones, and remote controls distributed by the agency [Texas State Library] or the National Library Service are the property of the federal government. Any equipment purchased by the agency [eommission] for loan to borrowers [active users] is the property of the agency [eommission].

(5) Repair of playback equipment. Only the agency [Texas State Library] is authorized to make repairs to playback equipment on loan to Texas borrowers, or to make the determination that a machine is damaged beyond repair. A machine that needs repair must be returned to the agency [Texas State Library], which will provide a replacement machine. Under no circumstances should a borrower or any other person attempt to repair the playback equipment or accessories.

(6) Accessories for use with the digital talking book machine may be requested through the agency [Texas State Library].

(7) Non-transferal of equipment. Borrowers must not lend, sell, or otherwise transfer playback equipment to other persons.

(8) Return of equipment. Playback equipment and accessories must be returned to the agency [Texas State Library] if the borrower ceases to actively use the service or no longer meets eligibility requirements for the service.

(9) Lost and damaged machines. A borrower is responsible for the good upkeep of any equipment loaned to that borrower. A borrower who repeatedly damages or loses equipment will not receive an automatic replacement, and a moratorium on future loans may be placed on the borrower's account. Borrowers may also face suspension of services in cases of flagrant abuse of equipment.

(10) Misuse of equipment. Borrowers who cause damage to equipment through negligence, intentional act, or failure to exercise reasonable care to safeguard or maintain the equipment or who use the equipment in an unauthorized manner may have their service suspended temporarily or permanently, depending on the severity or

frequency of the damage or unauthorized use [misuse equipment in a damaging or illegal manner will face suspension of service and may face a moratorium on future loans of equipment].

(11) Recall of equipment. Equipment may be recalled for the following reasons:

(A) periodic maintenance, either scheduled or unscheduled;

(B) as part of a recall issued by the National Library Service;

(C) for the purpose of repairing the machine;

(D) for non-cooperation on the part of the borrower with staff who are implementing and/or enforcing program policies and procedures;

(E) for a borrower's failure to adhere to the patron loan policy, the program's policies and procedures, and/or for abusive, destructive, or threatening behavior toward staff and property of National Library Service and of the agency [eommission];

(F) when a borrower no longer meets eligibility requirements for service, ceases to be an active borrower [user], or is deceased; and

(G) for any other reason or occasion, as determined by staff in accordance with policies and procedures of the program and/or guidelines provided by the National Library Service.

(b) If a borrower's machine is recalled, a replacement machine will be issued, dependent on the reason for the recall and the availability of a replacement machine. In the case of a general or wide-ranging recall, staff will notify borrowers affected by the recall in as reasonable a timeframe as possible. A borrower who does not cooperate with staff in the recall of equipment may have the loan of that equipment revoked for a period of time in accordance with the program's policies and procedures. A moratorium on future loans of equipment also may be placed on the borrower's account.

(c) Required audits of equipment. A borrower must cooperate with the agency [eommission] in the auditing of any loaned equipment. Staff may conduct periodic, limited audits, in accordance with guidelines provided by the National Library Service, in which a set number of machines selected for audit must be located and reported as being in the assigned location. Staff may also conduct a regular audit of all equipment, in which all equipment must be located and accounted for. A borrower who does not cooperate with staff conducting an audit may have the loan of all equipment revoked and a moratorium on future loans of equipment placed on the account.

§9.8. *Books and Magazines.*

(a) Loan period. The loan period for books is 45 days [~~for individuals and other institutions~~]. The loan period for magazines is 21 days [~~for individuals, schools, and other institutions~~]. No fines for overdue books or magazines will be levied, although excessive overdues may result in suspension of service until overdue situation is resolved. [~~A borrower with excessive overdues does not have an account in good standing.~~]

(b) Ownership. Books and magazines in all formats are the property of state and/or federal government. Books or magazines identified as "TSL" are the property of the agency [Texas State Library]. Magazines distributed by the National Library Service are the property of the National Library Service [NLS].

(c) Non-transferal of materials. Borrowers must not lend, sell, or otherwise transfer library books or magazines to other persons.

(d) Return of books and magazines. Except for disposable Braille and large print materials, all books and magazines must be returned to the agency [Texas State Library] at the end of their loan period. National Library Service [NLS] distributed magazines must be returned to the location listed on the mailing card or the label on the mailing container. If the borrower becomes ineligible or cancels service, all books and magazines must be returned to the agency [Texas State Library] regardless of whether the loan period has ended.

~~[(e) Lost and damaged materials. Excessive numbers of lost and/or damaged books may result in suspension of service until the situation is resolved. Any borrower with an excessive number of lost and/or damaged books and magazines does not have an account in good standing.]~~

§9.9. Availability of Materials.

(a) All materials that are available for distribution to borrowers are distributed either by specific request of the borrower or through an automated selection process based on an array of variables chosen by the borrower. The agency monitors [Texas State Library staff monitor] borrowers' requests and attempts [attempt] to keep items in stock that [which] borrowers are likely to demand. Availability of items such as books and magazines are subject to the following circumstances:

- (1) popular demand for a particular item;
- (2) whether an item has been damaged and removed from the collection;
- (3) ability of staff to acquire and/or replace an item; or,
- (4) whether an item has been lost.

(b) From time to time, shortages of books, equipment, and other items for distribution to borrowers [users] may occur. In the event of a shortage that will be widespread or has the potential to be of some duration, the agency [Texas State Library staff] will institute a special process of distribution to ensure [insure] that items are made available to borrowers [users] in an efficient and equitable manner. The type of process used will be determined by the specific type of shortage and in consultation with staff of the National Library Service.

§9.11. Misuse of Service.

The following actions may result in suspension of borrowing privileges:

- (1) repeated requests for replacement of equipment that has been damaged through negligence, maliciousness, or unauthorized repair;
- (2) excessive numbers of overdue books or magazines;
- (3) repeated loss or damage of books or magazines;
- (4) abusive, obscene, harassing, or threatening behavior to the agency [Texas State Library staff] and/or staff of the National Library Service;
- (5) providing access to/making available books or play-back equipment to unauthorized persons;
- (6) violations of the Patron Loan Policy and/or other policies described in this chapter;
- (7) refusal to cooperate with the agency [Texas State Library staff] carrying out policies and procedures of the program;
- (8) not keeping borrower's account in good standing, as described in §9.3(c)(3) of this chapter (relating to Eligibility). [~~"good standing."~~]

§9.12. Notification of Potential Suspension.

If a borrower is engaging in any activity described in §9.11 of this chapter (relating to Misuse of Service) [~~misusing the service~~], the agency [Texas State Library staff] will contact the borrower and attempt to resolve the situation. In most cases, a warning letter will be sent stating that borrowing privileges will be suspended on a designated date [~~suspension will be applied~~] if the borrower does not cease the misuse of service.

§9.13. Correction of Problem.

If the borrower's response to a warning letter [~~potential suspension~~] resolves the apparent problem or the borrower ceases the misuse of service by the designated date, and the borrower agrees to abide by agency [Texas State Library] policies in the future, no further action will take place at that time.

§9.14. Suspension of Service.

(a) The agency may suspend a borrower's service if [~~Suspension of service may come about under one of three conditions~~]:

(1) [a] borrower requests suspension of service because of illness, temporary relocation, or other personal reasons;

(2) [~~service is automatically suspended when a~~] borrower has not been active for a year;

(3) staff of the National Library Service request suspension of the account;

(4) the agency determines the borrower misused the service, as described in §9.11 of this chapter (relating to Misuse of Service); or

(5) [~~(3)~~] the agency identifies a problem with the account and the agency needs additional information from the borrower. [~~service is suspended by Texas State Library staff for cause. "For cause" may include the following:~~

~~[(A) misuse of service, as defined in §9.11 of this chapter (relating to Misuse of Service);]~~

~~[(B) Texas State Library staff detect a problem with the account and need further information from the borrower;]~~

~~[(C) staff of the National Library Service request suspension of the account.]~~

(b) In the event of suspension under subsection (a)(3) and (a)(5) [~~(a)(3)(B) and (C)~~] of this section, the agency [Texas State Library staff] will take the following actions:

(1) attempt to contact the borrower and resolve the situation so that service may be restored;

(2) determine an appropriate period of suspension[;] if the situation warrants an extended suspension.

(c) Suspension for cause generally will not exceed six months. In some instances, a longer suspension may be imposed after consultation with staff of the National Library Service. In the case of minor problems with the account, such as outdated or incorrect contact information, suspension is in effect until the problem is corrected or resolved.

(d) Any suspension may be extended if the cause has not been resolved as of the end of the previous suspension.

(e) Suspension of service may be limited only to the portion of service being misused. For example, if the misuse relates to Braille books, then Braille service would be suspended, but circulation of other formats would continue. The scope of the suspension will be determined by the extent of the cause and at the discretion of the agency [Texas State Library staff].

§9.15. *Reinstatement of Service.*

(a) If a borrower has voluntarily suspended service, then the borrower may contact the agency [Texas State Library staff] at any time to reinstate service. Service will be reinstated if less than five years have elapsed since service was suspended, the borrower still meets eligibility requirements, and the account is otherwise in good standing, as described in §9.3(c)(3) of this chapter (relating to Eligibility).

(b) If service was automatically suspended because the borrower had not been [an] active [user] for one [a] year, then the borrower may contact the agency [Texas State Library staff] at any time and request that service be reinstated. Service will be reinstated if less than five years have elapsed since service was suspended, the borrower still meets eligibility requirements, and the account is otherwise in good standing.

(c) If a borrower has been suspended for cause, service may be reinstated when the cause has been resolved or the suspension has expired, depending on the cause of suspension. In the case of a lengthy suspension, the patron will receive instructions, as part of the suspension notification, as to how to reinstate service. The borrower must continue to meet eligibility requirements and the account must otherwise be in good standing.

§9.16. *Termination of Service.*

(a) Service to eligible borrowers will not be permanently cancelled, although suspensions may be applied repeatedly. An account will be closed only under the following circumstances:

- (1) a borrower ceases to meet eligibility requirements;
- (2) a borrower requests that service be terminated; or,
- (3) a borrower ceases to be [an] active [user].

(b) A borrower's application and account information will remain on file for five years after the account has been closed, and the account may be reactivated at any time within the five years. After five years, the application and account information will be disposed of in accordance with the agency's approved [applicable] records retention schedule. If a borrower wishes to reinstate service after five years, the borrower must file a new application as required by §9.4 of this chapter (relating to Application for Service).

§9.17. *Transfer of Service.*

A borrower who has lived or will live outside the State of Texas for six months or longer will no longer be eligible to receive service through the agency [Texas State Library,] and must return all books and magazines [to the Texas State Library]. At the borrower's request, the agency [Texas State Library] will make arrangements to have service transferred to the new state of residence.

§9.18. *Reactivation of Accounts.*

(a) Any account that has been suspended may be reactivated[. Any account closed] within a five-year period if [may be reactivated. Reactivations occur under the following conditions]:

- (1) The borrower [User] continues to meet eligibility requirements for service;
- (2) The account [Account] will be in good standing upon reactivation; and
- (3) The agency has received an application as required by §9.4 of this chapter (relating to Application for Service) [Signed applicant agreement has been received].

(b) An account that has been closed for more than five years cannot be reactivated; the individual [user] must file a new application.

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

Filed with the Office of the Secretary of State on April 17, 2023.

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Sarah Swanson

General Counsel

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5474



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 5, 2023, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning the charter school performance frameworks. The proposed amendment would adopt in rule the 2022 *Charter School Performance Framework (CSPF) Manual*, which would be updated to comply with statutory provisions and the accountability framework currently used to rate the performance of open-enrollment charter schools in Texas.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1010 defines the standards by which the commissioner of education will measure the performance of open-enrollment charter schools.

The proposed amendment would replace the 2021 *CSPF Manual* with the 2022 *CSPF Manual*. The 2022 version of the manual would reflect the current accountability system and ratings.

Throughout the manual, language would be revised with clarifying edits such as updated dates and references to accountability indicators. Indicators that were not rated in 2021 would reflect the most current rating methodology. To provide clarity for schools that were not rated under the accountability system, a designation of "N/A" would be used for the Academic Standard and the Alternative Education Accountability Academic Standard.

FISCAL IMPACT: Kelvey Oeser, deputy associate commissioner for educator support, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation in order to provide clarity for schools that were not rated under the accountability system. A designation of "N/A" would be used for the Academic Standard and the Alternative Education Accountability Academic Standard.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Oeser has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide open-enrollment charter schools with clarification on the year of the report and manual being issued. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 5, 2023, and ends June 5, 2023. 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 May 5, 2023. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §12.1181, which requires the commis-

sioner to develop and adopt performance frameworks to measure the performance of an open-enrollment charter school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2022 [2021] CSPF report is based on specific criteria, which are described in the 2022 [2021] *Charter School Performance Framework Manual* provided in this subsection.

Figure: 19 TAC §100.1010(c)

[Figure: 19 TAC §100.1010(c)]

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 24, 2023.

TRD-202301471

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 4, 2023

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §1.502

The Texas Department of Insurance proposes amending 28 TAC §1.502, concerning licensing persons with criminal history. These amendments update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023, amended by House Bill 1342, 86th Legislature, 2019.

EXPLANATION. HB 1342 amended Occupations Code §§53.021, 53.022, and 53.023, which contain factors to be considered by licensing agencies when contemplating how a criminal conviction relates to a licensed occupation. Section 1.502 incorporates elements of Occupations Code §§53.021, 53.022, and 53.023 regarding offenses and criteria to consider when licensing an individual with a criminal background. This

proposal updates §1.502 to reflect criteria in the Occupations Code as amended by HB 1342.

In addition, the proposed amendments update the list of criminal offenses considered under §1.502 to reflect changes in the Code of Criminal Procedure and the Penal Code since the rule was last amended in 2010, and it makes additional updates to the section based on practical experience under the current text of the section.

The section's proposed amendments are described in the following paragraphs.

Section 1.502(a) - (c). The proposal makes nonsubstantive changes to the text for plain language purposes and to correct capitalization.

Section 1.502(d). The proposal amends subsection (d) to address factors currently included in subsections (f) and (g) of the section.

New text is also included in subsection (d) to address Code of Criminal Procedure provisions cited by Occupations Code §53.021 for which the department may refuse to issue an original license or revoke, suspend, or refuse to renew.

Section 1.502(e). The proposal adds new subsection (e), stating that the department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization. This text replaces text in current subsection (h), which addresses the factors in Occupations Code §53.022 and §53.023 by listing them.

The subsections that follow new subsection (e) are redesignated as appropriate to reflect the addition of the new section.

Section 1.502(f). Current subsection (e), redesignated as subsection (f), provides a non-exhaustive list of crimes the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or of prime importance in determining fitness for licensure or authorization.

Proposed amendments to paragraph (2) clarify that the criminal violations considered under subsection (f)(2) include offenses pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice. The amendments also add a non-exhaustive list of five criminal violations specifically contemplated by the paragraph.

Proposed amendments to paragraph (4) add clarifying language and reorganize the offenses listed in the paragraph to track the numeric order of the Penal Code chapters and sections in which they are addressed. Amendments also insert references to additional offenses in the Penal Code for which the department may revoke, suspend, or refuse to issue or renew a license or authorization.

Finally, amendments add new paragraphs (5) - (8) to clarify that the crimes that the department considers in determining fitness for licensure or authorization include any offense described by the Code of Criminal Procedure Article 42A.054; sexually violent offenses as defined by Code of Criminal Procedure Article 62.001; any attempt or conspiracy to commit any offense listed in §1.502 as described by the Penal Code; and any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains

elements that are substantially similar to the elements of an offense listed under §1.502.

Section 1.502(f) - (h). Proposed amendments delete current subsections (f) - (h) because the provisions in these subsections are addressed in proposed amendments to subsections (d) and (e).

Section 1.502(g). Current subsection (i) is redesignated as subsection (g). In addition, the word "shall" is replaced with "will."

Section 1.502(h). Current subsection (j) is redesignated as subsection (h). In addition, the word "shall" is replaced with "will."

Section 1.502(i). Current subsection (k) is redesignated as subsection (i).

The proposal also includes additional nonsubstantive text changes for style and grammar, for consistency with current department rule drafting preferences.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jodie Delgado, director of Agent and Adjuster Licensing, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the amendments, other than that imposed by the statute. Ms. Delgado made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Delgado does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Delgado expects that administering them will have the public benefits of ensuring that the department's rules conform to Occupations Code §§53.021, 53.022, 53.023, and 53.025.

Ms. Delgado expects that the proposed amendments will not increase the cost of compliance because the proposal does not impose requirements beyond the regulations currently in place. The changes to §1.502 update the section for consistency with Occupations Code §§53.021, 53.022, and 53.023. This adds no cost and has no adverse economic impact.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to small and micro businesses and rural communities. The changes to §1.502 update the section for clarity and consistency with Occupations Code §§53.021, 53.022, and 53.023. They address criteria for license issuance, revocation, and suspension. This does not add or create costs for small or microbusinesses or rural communities. As a result, and in accordance with Texas Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a cost on regulated persons.

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

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not 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.

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

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, on June 5, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on June 5, 2023. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §1.502 under Occupations Code §§53.021, 53.022, 53.023, and 53.025 and Insurance Code §36.01.

Occupations Code §53.021 states grounds on which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination.

Occupations Code §53.022 provides factors that a licensing authority must consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.023 provides additional factors that a licensing authority must consider in determining whether to take an action authorized by Occupations Code §53.021 if it determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.025 requires licensing authority to issue guidelines relating to the practice of the licensing authority under Occupations Code Chapter 53. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 1.502 implements Occupations Code §§53.021, 53.022, 53.023, 53.0231, and 53.025.

§1.502. Licensing Persons with Criminal Backgrounds.

(a) The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public ~~place~~ trust ~~in~~ and ~~rely on~~ licensees because of ~~reliance upon such persons due to~~ the complex and varied nature of insurance, insurance-related products, and discount health care programs.

(b) Fire protection systems and equipment are often technically sophisticated beyond the knowledge or understanding of the average consumer. During times of imminent personal danger, the public relies on licensees to have correctly designed, installed, and serviced fire protection systems and equipment to operate the first time and each time they are needed. Additionally, licensees are often permitted to service these systems unescorted in nursing homes, schools, day care centers, and commercial facilities where children and those unable to protect themselves are present and valuables are located. Finally, the manufacturing, storing, selling, and discharge of fireworks requires numerous special precautions to maintain a safe environment for the licensees and the public. Each of these factors requires the public to ~~place~~ trust ~~in~~ and ~~rely on~~ ~~reliance upon~~ these individuals.

(c) The department considers it very important that license and authorization holders and applicants, including those regulated under the ~~State Fire Marshal's Office~~ ~~state fire marshal's office~~, the officers, directors, members, managers, partners, and any other persons who have the right to control a license or authorization holder or applicant, and the members of boards of directors of insurance companies, be honest, trustworthy, and reliable.

(d) After notice and opportunity for hearing and, as applicable, consideration of the factors addressed in subsection (e) of this section, in accordance with Texas Occupations Code §53.021 the [The] department may refuse to issue an original license or authorization and may revoke, suspend, or refuse to renew a license or authorization if the department determines that the applicant or license or authorization holder, or any partner, officer, director, member, manager, or any other person who has the right to control the applicant or license or authorization holder, has been convicted of or placed on deferred adjudication for:

(1) an offense [committed a felony or misdemeanor, or has engaged in fraudulent or dishonest activity] that directly relates to the duties and responsibilities of the licensed occupation;[-]

(2) an offense listed in Code of Criminal Procedure Article 42A.054; or

(3) a sexually violent offense as defined by Code of Criminal Procedure Article 62.001.

(e) The department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization under subsection (d) of this section.

(f) ~~[(e)]~~ In accordance with the requirements of Texas Occupations Code §53.025, the department has developed guidelines relating to the matters ~~[which]~~ the department will consider in determining

whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those crimes that [whieh] the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or are of prime importance in determining fitness for licensure or authorization include [but are not limited to]:

(1) any offense for which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Texas Insurance Code or an offense pertaining to the financial industry or business of insurance under any state or federal [insurantee or security] law or any law of a foreign country or the Uniform Code of Military Justice, including: [regulating or pertaining to the business of insurance;]

(A) a fraud offense, as described by Penal Code Chapter 32;

(B) money laundering, as described by Penal Code Chapter 34;

(C) insurance fraud, as described by Penal Code Chapter 35;

(D) health care fraud, as described by Penal Code Chapter 35A; or

(E) engaging in the unauthorized business of insurance, as described by Insurance Code §101.106;

(3) any felony involving moral turpitude or breach of fiduciary duty; [or]

(4) any [an] offense with the essential elements of:

(A) a criminal solicitation offense, as described by Penal Code §15.03 or §15.031;

(B) [(A)] a criminal homicide offense, as described by Penal Code[.] Chapter 19;

[(B)] a felony offense of assault, as described by Penal Code, Chapter 22;]

(C) a kidnapping or unlawful restraint offense, as described by Penal Code Chapter 20;

(D) an offense related to the smuggling of persons or the trafficking of persons, as described by Penal Code Chapter 20 or 20A;

(E) a sexual offense, as described by Penal Code Chapter 21;

(F) an assaultive offense, as described by Penal Code Chapter 22;

(G) an offense against the family, as described by Penal Code Chapter 25;

(H) [(C)] an arson or property damage offense, as described by Penal Code[.] Chapter 28;

(I) [(D)] a robbery offense, as described by Penal Code[.] Chapter 29;

(J) [(E)] a burglary offense, as described by Penal Code[.] Chapter 30;

(K) [(F)] a theft offense, as described by Penal Code[.] Chapter 31;

(L) online solicitation of a minor, as described by Penal Code §33.021;

(M) a bribery or corrupt influence offense, as described by Penal Code Chapter 36;

(N) a perjury or falsification offense, as described by Penal Code Chapter 37;

(O) a stalking offense, as described by Penal Code §42.072;

(P) an offense against public order and decency, as described by Penal Code Chapter 43;

(Q) a weapons offense, as described by Penal Code Chapter 46;

(R) an intoxication assault or manslaughter offense, as described by Penal Code §49.07 or §49.08;

(S) an organized crime offense, as described by Penal Code Chapter 71; or

(T) [(G)] an offense relating to the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance, a simulated controlled substance, [or] a dangerous drug, or a volatile chemical; [and]

[(H)] an offense against the person as described by Penal Code §§20.03, 20.04, 21.07, 21.08, or 21.11;]

[(I)] an offense against the family as described by Penal Code §§25.02 or 25.07;

[(J)] a stalking offense as described by Penal Code §42.072; or]

[(K)] an offense against public order and decency as described by Penal Code §§43.25 or 43.26.]

(5) any offense described by Code of Criminal Procedure Article 42A.054;

(6) a sexually violent offense as described by Code of Criminal Procedure Article 62.001;

(7) any criminal attempt or conspiracy to commit any offense listed under this section, as described by Penal Code §15.01 or §15.02; or

(8) any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under this section.

[(f)] The department shall not issue a license or authorization if an applicant has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.]

[(g)] The department may, after notice and opportunity for hearing, revoke a license or authorization if the holder has committed a felony or misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless the commissioner finds that the matters set out in subsection (h) of this section outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.]

[(h)] The department will consider the factors specified in Texas Occupations Code §§53.022 and 53.023 in determining whether

to grant, deny, suspend, or revoke any license or authorization under its jurisdiction.}]

[(1) In determining whether a criminal offense directly relates to the duties and responsibilities of the licensed occupation, the department shall consider the following factors:}]

[(A) the nature and seriousness of the crime;}]

[(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;}]

[(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and}]

[(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.}]

[(2) In addition to the factors listed in paragraph (1) of this subsection, the department shall consider the following evidence in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime:}]

[(A) the extent and nature of the person's past criminal activity;}]

[(B) the age of the person when the crime was committed;}]

[(C) the amount of time that has elapsed since the person's last criminal activity;}]

[(D) the conduct and work activity of the person prior to and following the criminal activity;}]

[(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and}]

[(F) other evidence of the person's present fitness, including letters of recommendation from:}]

[(i) prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;}]

[(ii) the sheriff or chief of police in the community where the person resides; and}]

[(iii) any other persons in contact with the person.}]

[(G) In addition to the factors and evidence listed in paragraphs (1) and (2) of this subsection, an applicant or license or authorization holder shall also furnish proof that the applicant or holder has:}]

[(i) maintained a record of steady employment;}]

[(ii) supported the applicant's or holder's dependents where applicable;}]

[(iii) otherwise maintained a record of good conduct; and}]

[(iv) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.}]

[(3) It shall be the responsibility of the applicant or holder to the extent possible to secure and provide to the commissioner the information required by paragraph (2) of this subsection.}]

(g) [(i)] The department will [shall] consider any specific criteria the legislature has set out for any license or authorization in considering whether to grant, deny, suspend, or revoke such license or authorization.

(h) [(j)] The department will [shall] revoke a license or authorization on the holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(i) [(k)] No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license or authorization issued by the department.

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, 2023.

TRD-202301402

Allison Eberhart

Deputy General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.6

Texas State Soil and Water Conservation Board proposes an amendment to Title 31 Texas Administrative Code, §523.6(e)(5), which limits the amount of cost share incentive funding per operating unit to \$15,000. The agency is proposing to remove the amount from rule and base it on a routine state board decision within the Water Quality Management Plan Program.

Fiscal Note

Kenny Zajicek, Fiscal Officer, has determined that for each year of the first five years that the rule is in effect, there are no anticipated increases or reductions in costs to the state and local governments due to enforcing or administering the rule.

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years that the rule is in effect, there is no anticipated impact in revenue to state government as a result of enforcing or administering the rule.

Public Benefit and Cost Note

Kenny Zajicek, Fiscal Officer, has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to protect the public by establishing and maintaining a high standard of integrity, skills, and practice.

Local Employment Impact Statement

Kenny Zajicek, Fiscal Officer, has determined that the rule will not impact local employment or economy. Thus, the board is not required to prepare a local employment impact statement pursuant to §2001.022, Government Code.

Economic Impact Statement and Regulatory Flexibility Analysis

Kenny Zajicek, Fiscal Officer, has determined that there are no anticipated adverse economic effects on small businesses, micro-businesses, or rural communities because of the rule. Thus, the Board is not required to prepare an economic impact statement or a regulatory flexibility analysis pursuant to §2006.002, Government Code.

Takings Impact Assessment

Kenny Zajicek, Fiscal Officer, has determined that no private real property interests are affected by the rule. Thus, the board is not required to prepare a takings impact assessment pursuant to §2007.043, Government Code.

Public Benefit/Cost Note.

Kenny Zajicek, Fiscal Officer, has determined, under Government Code §2001.024(a)(5), that for the first five-year period, the amended rules are in effect, the public benefit will be an efficient use of state resources. He further has determined there will be no probable economic cost to persons required to comply with the rule.

Government Growth Impact Statement

For the first five years that the rule would be in effect, it is estimated that; the proposed rule would not create or eliminate a government program; implementation of the proposed rule would not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule would not require an increase or decrease in future legislative appropriations to the agency; the proposed rule would not require an increase in the fees paid to the agency; the proposed rule would not create a new regulation; the proposed rule would not expand, limit, or repeal an existing regulation; the proposed rule would not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule would not positively or adversely affect the state's economy.

Environmental Rule Analysis

The proposed rule is not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rule is not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is/is not required.

Request for Public Comments

The Texas State Soil and Water Conservation Board invites comments on the proposed new rule from any interested persons, including any member of the public. A written statement should be mailed or delivered to Heather Bounds, Texas State Soil and Water Conservation Board, 1497 Country View Lane, Temple, Texas 76504, or by e-mail to hbounds@TSSWCB.Texas.Gov. Comments will be accepted for 30 days following publication in the *Texas Register*. Comments must be received within 30 days after the publication of this proposal to be considered.

Statutory Authority

With the enactment of Senate Bill 503 (73rd Regular Session - Sims / Counts) in 1993, the Texas Legislature designated the Texas State Soil and Water Conservation Board (TSSWCB) the

lead agency in the state for the abatement, management, and prevention of nonpoint source pollution from agricultural or silvicultural sources. Additionally, the Legislature authorized the agency to administer a certified Water Quality Management Plan (WQMP) Program, complete with a cost-share program to incentivize participation and offset the cost of implementing soil and water land improvement measures for lands within the state. While the TSSWCB makes the program available on a statewide basis, the State Board approves priorities based on activity and geography to target the cost-share incentive funding to the areas of the state that exhibit the most need for nonpoint source pollution abatement.

Title 31 Texas Administrative Code, §523.6(f)(4), which limits the amount of cost share incentive funding per operating unit to \$15,000. The agency is proposing to remove the amount from rule and base it on a routine state board decision within the Water Quality Management Plan Program.

§523.6. *Cost-Share Incentive Funding for Soil and Water Conservation Land Improvement Measures.*

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

(e) Administration of Funds.

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

(5) Maximum Allowable Amount of Cost-Share Funds per Operating Unit. The maximum allowable amount of cost-share funds that may be applied to any single operating unit will be adopted by the State Board prior to the beginning of each biennium [is \$15,000]. This provision applies only to general revenue funds appropriated by the Texas Legislature to assist program participants with the implementation of soil and water conservation land improvement measures as allowed by Agriculture Code §201.301. In cases where the funding for cost-share incentives originates from sources other than appropriations made directly to this program by the Texas Legislature, the maximum allowable amount of cost-share incentive funding per operating unit will be established by the terms of the contractual agreement providing the funds until otherwise specified by the State Board.

(f) - (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 April 18, 2023.

TRD-202301401

Heather Bounds

Government Relations Specialist

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: June 4, 2023

For further information, please call: (254) 778-8741

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.297

The Comptroller of Public Accounts proposes amendments to §3.297, concerning carriers, commercial vessels, locomotives and rolling stock, and motor vehicles. The comptroller amends the section to implement the changes made to Tax Code, §160.001(2) (Definitions) by House Bill 4032, 86th Legislature, 2019 and to codify current comptroller policy regarding the taxability of components and the repair and maintenance of vessels.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032 and to more closely follow the statute and the definition of taxable boat in §3.741 of this title (relating to Imposition and Collection of Tax).

The comptroller amends subsection (c)(3) entitled, "component parts," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification without substantive change to the subparagraph.

The comptroller amends subsection (c)(4) entitled, "repair and maintenance," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification in accordance with STAR Accession No. 9809812L (September 15, 1998) without substantive change to the subparagraph.

Brad Reynolds, Chief Revenue Estimator, 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.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute and incorporating long-standing agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §151.329 (Certain Ships and Ship Equipment), §151.3291 (Boats and Boat Motors), and 160.001(2) (Definitions).

§3.297. *Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.*

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

(1) Chapter 160 boat--A vessel not more than 115 [65] feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term includes federally documented vessels, sailboats, personal watercraft, and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and canoes, kayaks, rowboats, rafts, punts, [that is not a canoe, kayak, rowboat, raft, punt, inflatable vessel,] or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" [and that is subject to tax] under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4) Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a

salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8) Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10) Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) Carriers generally.

(1) Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas and actually affixed in Texas to a self-propelled vehicle that is used by a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(2) Use tax is due on the storage or use of tangible personal property brought into Texas to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section.

(3) Sales tax is not due on the sale of tangible personal property to a common carrier if the tangible personal property is shipped to a point outside of Texas using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property

is to be used by the purchasing carrier in the conduct of its business outside of Texas.

(c) Vessels.

(1) Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151 [~~Limited Sales, Excise, and Use Tax~~]. For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2) Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat.

(3) Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel, ~~or~~ a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. A component part is tangible personal property that is actually attached to and becomes a part of a commercial vessel, ~~or~~ a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. For example, items such as radios, radar equipment, navigation equipment, winches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel, or a component part of a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) Sales or use tax is not due on the sale of materials and consumable supplies, including items commonly known as ships' stores and sea stores, to the owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel.

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate the title or position of

the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(6) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

(d) Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(e) Rolling stock, locomotives, and trains.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3) Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4) Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5) Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated, used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Motor vehicles. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

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 24, 2023.

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Earliest possible date of adoption: June 4, 2023

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



SUBCHAPTER EE. BOAT AND BOAT MOTOR SALES AND USE TAX

34 TAC §3.741

The Comptroller of Public Accounts proposes amendments to §3.741, concerning imposition and collection of tax, relating to Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors). This proposed amendment implements House Bill 2926, 78th Legislature, 2003; House Bill 1106, 83rd Legislature, 2013; and House Bill 4032, 86th Legislature, 2019. Other amendments to the section reflect changes to existing text for consistency, clarity, and to incorporate long-standing agency policy.

The comptroller amends the section by inserting the word "sales" before the word "tax" when appropriate and replacing the terms "state" and "this state" with the term "Texas" throughout the section for uniformity with other sections of this title. The comptroller also inserts the term "taxable" before the term "boat" where appropriate to conform to the term defined in subsection (a)(12). The comptroller also replaces the term "boat" with the term "outboard" when referring to motor throughout the section to conform to the term defined in subsection (a)(13).

The comptroller amends current subsection (a), entitled "definitions," by revising certain existing definitions and by adding nine new terms in paragraphs (2), (3), (6), (7), (9), (10), (14), (15), and (18). The comptroller renumbers existing paragraphs in the subsection accordingly.

The comptroller amends subsection (a)(1) defining the term "accessories" by replacing the term "boat" with the more general term "vessel" because accessories may be attached to vessels other than taxable boats. The comptroller further amends the paragraph by adding the terms "water skis" and "tow ropes" deleted and relocated from current subsection (f)(1) and adding a statement excluding boat trailers from the definition of an accessory.

The comptroller adds a new paragraph (2) defining the term "agent of the department." The amendment is derived from the definition of the same term in Parks and Wildlife Code, §31.003(15) (Definitions).

The comptroller adds a new paragraph (3), defining the term "Application for Certificate of Title and/or Registration." The amendment derives the definition, in part, from Parks and Wildlife Code, §31.046 (Application for Certificate of Title), and §31.047 (Application; Form and Content; Fee).

The comptroller amends current paragraph (2), renumbered paragraph (4), defining the term "dealer" based on the revi-

sions to the definition of the term in Parks and Wildlife Code, §31.003(7), and by adding a licensing requirement based on §31.041 (Duties of Dealers, Distributors, and Manufacturers; License Required).

The comptroller adds new paragraph (6) defining the term "Distributor." The definition is based on the definition of the term "distributor" in the Parks and Wildlife Code, §31.003, added by House Bill 2926.

The comptroller adds new paragraph (7) defining the term "federally documented vessel." The definition comes from information on the United States Coast Guard website at <https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Docummentation-Center/> (April 20, 2023).

The comptroller amends current paragraph (4), renumbered paragraph (8), defining the term "manufacturer." The comptroller amends the definition to incorporate revisions to Parks and Wildlife Code, §31.003(11), and to add a licensing requirement based on §31.041.

The comptroller deletes paragraph (6) defining the term "tax assessor-collector" and adds new paragraph (9) defining the term "participating county tax assessor-collector." The comptroller defines the term as a county tax assessor-collector that has an agreement with the Texas Parks & Wildlife Department (Parks & Wildlife) to title and/or register taxable boats or outboard motors in Texas. The comptroller bases the definition on guidance from STAR Accession No. 9110L1150C10 (October 3, 1991).

The comptroller adds new paragraph (10), defining the term "registered repair facility." The definition incorporates Tax Code, §160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), added by House Bill 4032 and includes a requirement that the repair facility hold a Texas sales and use tax permit.

The comptroller amends current paragraph (5), renumbered paragraph (11), defining the term "retail sale" by incorporating the language from Tax Code, §160.001(7) (Definitions), to follow the statute more closely.

The comptroller amends current paragraph (7), renumbered paragraph (12), defining the term "taxable boat." The comptroller amends the definition of "taxable boat" by increasing the length of a taxable boat from 65 feet to 115 feet based on Tax Code, §160.001(2) revised by House Bill 4032. The comptroller further amends the paragraph to more closely follow the statutory definition of taxable boat in Tax Code, §160.001(9), by rearranging the paragraph, deleting the term "inflatable" and adding the term "punts". The comptroller also adds the word "only" when referring to the how the boat is propelled to clarify the taxability of vessels that are designed to be propelled by oars or motors. The comptroller further amends the paragraph by replacing the term "jet skis," which is a manufacturer's trade name, with the generic term "personal watercraft."

The comptroller amends current paragraph (8), renumbered paragraph (13), by changing the defined term from "taxable motor" to "outboard motor" based on Tax Code, §160.001(5) and (9), and Parks and Wildlife Code, §31.003(13). The comptroller further amends the paragraph by replacing the terms "watercraft" and "boat" with the term "vessel" used in Tax Code, §160.001(2), as amended by House Bill 4032.

The comptroller adds new paragraph (14), defining the term "temporary use permit." The comptroller derives the definition

from the language in Tax Code, §160.0247 (Temporary Use Permit), added to Tax Code, Chapter 160, by House Bill 4032.

The comptroller adds new paragraph (15), defining the term "territorial boundaries of Texas." The comptroller derives the definition, in part, from the language in §3.332(c) of this title (relating to Drilling Equipment) and STAR Accession No. 200905476L (May 1, 2009).

The comptroller amends current paragraph (9), renumbered paragraph (16), defining the term "total consideration" by incorporating language from Tax Code, §160.002 (Total Consideration), and rearranging certain other terms for clarity and readability. The comptroller amends the second sentence of the paragraph by adding language explaining that total consideration includes the inventory tax due and payable by dealers under Tax Code, §23.124 (Dealer's Vessel and Outboard Motor Inventory; Value). The comptroller further amends the paragraph by including long-standing comptroller practice under STAR Accession No. 9607L1418A11 (July 11, 1996). See Comptroller's Decision No. 42,142 (2005) and §3.74 of this title (relating to Seller Responsibility).

The comptroller amends current paragraph (10), renumbered paragraph (17), defining the term "use" by adding the terms "taxable boat or outboard motor" and creating two examples describing "use" in new subparagraphs (A) and (B). The comptroller derives the example in subparagraph (A) from current subsection (a)(10). The comptroller derives the example in new subparagraph (B), in part, from the language in Tax Code, §160.0246, added by House Bill 4032.

The comptroller adds new paragraph (18), defining the term "vessel." The comptroller derives the definition from §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles), and Parks and Wildlife Code, §31.003(2).

The comptroller amends the heading for current subsection (b) entitled "general principles" to read "general principles of taxation" to better inform readers as to what the subsection contains. The comptroller amends current subsection (b)(1) by deleting the phrase "the boat and boat motor sales and use tax" and adding the title for Tax Code, Chapter 160 for clarification without substantive change.

The comptroller amends subsection (b) by adding a new paragraph (2) by relocating the second sentence from current paragraph (2) and adding the term "lease" and a statement that taxable boats or outboard motors cannot be purchased for resale. The amendment is based on Tax Code, §151.3291 (Boats and Boat Motors), and guidance from STAR Accession No. 9709824L (September 29, 1997).

The comptroller amends current subsection (b)(2), renumbered as paragraph (3), by correcting the title of Tax Code, Chapter 151, and deleting and relocating the second sentence to new paragraph (2) for clarification without substantive change. The amendment includes several minor edits to current subsection (b)(3), renumbered as paragraph (4), for consistency and clarification without substantive change.

The comptroller amends current subsection (b)(4), renumbered as paragraph (5), by inserting the titles for the Parks and Wildlife Code sections cited therein and by making several edits for clarification without substantive change. The comptroller further amends renumbered paragraph (4) and paragraph (5) by replacing the phrase "the provisions of the boat and boat motor

sales and use tax" with "Tax Code, Chapter 160" for uniformity without substantive change to the paragraph.

The comptroller adds new paragraph (6) addressing the taxation of a taxable boat or outboard motor purchased at retail outside Texas and brought into Texas for use in Texas by a Texas resident or person domiciled or doing business in Texas in accordance with Tax Code, §160.022 (Use Tax). The new paragraph also adds a reference to the new resident use tax in accordance with Tax Code, §160.023 (New Resident).

The comptroller adds new paragraph (7) addressing the taxation of a boat trailer in accordance with STAR Accession No. 200109441L (September 6, 2001). The new paragraph also references §3.74 of this title and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

The comptroller amends subsection (c), entitled "imposition of the tax," by creating two new subparagraphs in paragraph (1) and by moving the 6.25% tax rate referenced in current paragraph (2) to new paragraphs (1)(A) and (2)(A).

The comptroller derives new subparagraph (A) from Tax Code, §160.021 (Retail Sales Tax), and implements the amendment to Tax Code, Chapter 160, by House Bill 4032, adding Tax Code, §160.026 Limitation on Amount of Tax, limiting the amount of total sales tax due at \$18,750. New subparagraph (B) restates the last two sentences in current paragraph (1) and makes several edits for clarification without substantive change.

The comptroller amends subsection (c) by deleting the language in paragraph (2) and adding new language relating to use tax due under Tax Code, §160.022. New subparagraph (A) states that tax is due on the total consideration paid or to be paid, regardless of any use or depreciation prior to entry into Texas. New subparagraph (B) makes the use tax an obligation of the person who brings the taxable boat or outboard motor into Texas in accordance with Tax Code, §160.022. New subparagraph (B) allows a credit against the Texas use tax in accordance with Tax Code, §160.025 (Credit for Other Taxes). New subparagraph (C) states that the new resident use tax imposed is \$15 and is in lieu of the use tax in accordance with Tax Code, §160.023.

The comptroller further amends subsection (c)(2) by adding a new subparagraph (D) providing that use tax is not due on the use of a taxable boat or outboard motor brought into Texas if the owner of a taxable boat or outboard motor obtains a current temporary use permit. The addition of new subparagraph (D) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247. The comptroller amends subsection (c)(2) by adding a new subparagraph (E) explaining that use tax is due on the use of a taxable boat or outboard motor located within the territorial boundaries of Texas after the expiration date of the temporary use permit. The amendment makes minor changes to current subsection (c)(2), renumbered (3), for clarity without substantive change.

The comptroller amends subsection (d), entitled "payment of the tax," by creating two new subparagraphs in paragraph (1) for clarity and readability. The comptroller further amends section (d)(1) by replacing the phrase "after the completion of the seller, donor, or trader's affidavit" with the phrase "the seller and purchaser must complete an Application for Certificate of Title and/or Registration" since the comptroller and Parks & Wildlife have combined the tax affidavit required under Chapter 160 with Parks and Wildlife's Application for Certificate of Title. New subparagraph (A) is drawn from the remainder of the language in current paragraph (1). The comptroller further amends the new

subparagraph by deleting and replacing the term "county tax assessor-collector" with the term "participating county tax assessor-collector" at the end of the subparagraph in accordance with STAR Accession No. 9110L1150C10.

The comptroller amends subsection (d)(2) by designating it as new subparagraph (B) of paragraph (2) and amending the new subparagraph by deleting the phrase "after the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor" based on the amendment to subsection (d)(1). The comptroller amends new subparagraph (B) by replacing the term "affidavit" with the term "Application for Certificate of Title and/or Registration" and inserting the term "an agent of the department," and deleting and replacing the term "county tax assessor-collector" with "participating county tax assessor-collector." The amendment further revises new subparagraphs (A) and (B) by replacing the numeral "20" with the numeral "45" in accordance with House Bill 4032.

The comptroller amends subsection (d) by renumbering paragraph (2) as paragraph (3) and adding language to make the paragraph consistent with the rest of the subsection. The amendment revises the paragraph by replacing the numeral "20" with the numeral "45" in accordance with the changes made to Tax Code, §160.041 (Collection Procedure), by House Bill 4032. The comptroller amends current subsection (d) by adding a new paragraph (3) giving guidance for the transfer of a taxable boat or outboard motor due to a tax exemption, even exchange, or gift of a taxable boat or outboard motor in accordance with Tax Code, Chapter 160.

The comptroller makes minor changes to current subsection (e), entitled "Failure of tax remittance by the selling dealer," for clarity and consistency within the section without substantive change.

The comptroller amends the heading for current subsection (f), entitled "purchase of accessories/components for resale," to read "purchase of tangible personal property or accessories for resale" to conform to the contents of the amended subsection. The amendment deletes the heading for paragraph (1) because no paragraphs in the current section contain a heading. The comptroller amends the subsection by inserting the words "properly completed" before the word "resale" for consistency with other sections of this title. The amendment also replaces the term "Limited Sales, Excise, and Use Tax Act" with the term "Tax Code, Chapter 151" for consistency and readability. The comptroller further amends current subsection (f)(1) by creating a new paragraph (2) from the second sentence in current paragraph (1) and by inserting the language "A properly completed resale certificate may be used in purchasing" for clarity and readability. The amendment also replaces the word "single" with the word "lump-sum" to be consistent with the last sentence in the new paragraph. The comptroller amends current paragraph (1) by deleting the sentence "These accessories include water skis and tow ropes" and relocating the terms "water skis and tow ropes" to subsection (a)(1) defining "accessories."

The amendment renumbers current paragraph (2) as paragraph (3), replaces the term "boat or boat motor" with the term "vessel" and replaces the phrase "boats over 65" with the phrase "vessels over 115" to be consistent with the changes made to Tax Code, §160.001, by House Bill 4032.

The comptroller adds new subsection (g), entitled, "exemptions and non-taxable transactions," which contains three new paragraphs.

The comptroller adds new paragraph (1) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use in another state or nation before any use in Texas. New paragraph (1) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247 to Chapter 160. New paragraph (1) contains five subparagraphs (A) through (E).

Subparagraph (A) requires the purchaser to provide the seller with a signed written statement stating that the purchaser intends to remove the taxable boat or outboard motor from Texas for use in another state or nation by complying with either subparagraph (B), (C), or (D).

Subparagraph (B) requires the removal of the taxable boat or outboard motor from Texas within ten days of the sale in accordance with Tax Code, §160.0246(a)(1).

Subparagraph (C) requires the taxable boat or outboard motor be placed in a registered repair facility within 10 days of the date of sale and then removed from Texas within 20 days from the date the repairs, remodeling, maintenance, or restoration are completed in accordance with Tax Code, §160.0246(a)(2).

Subparagraph (D) requires the purchase of a temporary use permit within the time limits described in paragraph (1)(B) and (C) in accordance with Tax Code, §160.0246(a)(3) and (b).

Subparagraph (E) states that sales tax is due if the purchaser fails to meet the requirements of subparagraphs (A), (B), (C), or (D).

The comptroller adds new paragraph (2) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use by a governmental entity. New subparagraph (A) addresses the exemption for sales to the state of Texas, its agencies, instrumentalities, and political subdivisions in accordance with Tax Code, §160.024 (Exemption). New subparagraph (B) addresses the exemption for sales to the United States, its unincorporated agencies and instrumentalities, including instrumentalities chartered by the United States congress, such as the American Red Cross, in accordance with Tax Code, §160.024, and STAR Accession No. 9803362L (March 12, 1998). New subparagraph (C) addresses the exemption for volunteer fire departments in accordance with Tax Code, §160.0245 (Exemption for Emergency Service Organizations).

The comptroller adds new paragraph (3) concerning the non-taxable transfer of a taxable boat or outboard motor to an insurance company due to the settlement of an insurance claim or by a seller or lienholder due to a repossession of a taxable boat or outboard motor in accordance with STAR Accession No. 9306L1247F11 (June 28, 1993).

The comptroller adds new subsection (h), entitled, "refunds," which contains four paragraphs. New paragraph (1) informs the reader who may request a refund of any boat or boat motor sales and use tax paid in error in accordance with Tax Code, §111.104(b) (Refunds).

New paragraph (2) sets out the requirements for filing a refund claim in subparagraphs (A) through (D) in accordance with Tax Code, §111.104(c).

Subparagraph (A) requires that the request be in writing on comptroller's Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax. Subparagraph (B) requires that the request

state the specific grounds upon which the claim is founded. Subparagraph (C) requires that the request be filed within four years from the date on which the tax was due and payable. Subparagraph (D) informs the reader that the comptroller can require a person to submit additional information to verify the refund under Tax Code, §111.004 (Power to Examine Records and Persons).

A new paragraph (3) states that the comptroller will notify a claimant if the comptroller determines that a refund claim cannot be granted, in part or in full, and the comptroller will also notify a claimant which requirements were not met in accordance with Tax Code, §111.1042 (Tax Refund: Informal Review). The amendment also explains that the claimant may request a refund hearing within 30 days of the denial of the refund in accordance with Tax Code, §111.105 (Tax Refund: Hearing). New paragraph (3) provides that a person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied in accordance with Tax Code, §111.107(b) (When Refund or Credit Is Permitted).

New paragraph (4) sets out the requirements for a person who intends to file suit under Tax Code, Chapter 112 (Taxpayers' Suits).

Brad Reynolds, Chief Revenue Estimator, 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.

Mr. Reynolds also has determined that the proposed amended rule would benefit the public by conforming the rule to current statute and incorporating long-standing agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public.

You may submit comments on the proposal to Jenny Burlison, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§160.001 (Definitions), 160.002 (Total Consideration), 160.021 (Retail Sales Tax), 160.022 (Use Tax), 160.023 (New Resident), 160.024 (Exemption), 160.0245 (Exemption for Emergency Service Organizations), 160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), 160.0247 (Temporary Use Permit), 160.026 (Limitation on Amount of Tax), and 160.041 (Collection Procedure).

§3.741. *Imposition and Collection of Tax.*

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

(1) Accessories--Nonessential tangible personal property attached to or sold with a vessel [a boat] for the convenience or comfort of the operator or passengers. The [For purpose of this rule, the] term "accessories" includes, but is not limited to, radios, mirrors, transom-mounted ladders, electric trolling motors, water skis, tow ropes, and depth finders. The term does not include a boat trailer.

(2) Agent of the Department--A dealer who is authorized by the Department under Parks and Wildlife Code, §31.006 (Appointment of Authorized Agent), to collect taxes and fees and issue certificates of number for taxable boats and outboard motors sold by that dealer in Texas.

(3) Application for Certificate of Title and/or Registration--Form PWD 143 (boats) or PWD 144 (outboard motors), an electronic equivalent, or a successor form used to apply for a certificate of title and/or registration for a taxable boat or outboard motor and/or to pay any sales or use tax due on the sale or use of a taxable boat or outboard motor in Texas. The Applications for Certificate of Title and/or Registration are available at <https://tpwd.texas.gov/fishboat/boat/forms/>.

(4) [(2)] Dealer--A person who holds a license issued by the Department to engage [or entity engaged] in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five taxable boats or outboard [boat] motors in Texas during a calendar year at an established or permanent place of business in Texas [this state. At each such place of business a sign must be conspicuously displayed showing the name of the dealership so that it may be located by the public, and sufficient space must be maintained for an office, service area, and display of boats and boat motors].

(5) [(3)] Department--The Texas Parks and Wildlife Department.

(6) Distributor--A person who holds a license issued by the Department to engage in the business of selling, offering for sale, or processing for distribution new taxable boats or outboard motors to dealers in Texas.

(7) Federally documented vessel--A vessel of five net tons or more, operated on United States navigable waters that has been issued a valid marine certificate of documentation on file with the United States Coast Guard National Vessel Documentation Center.

(8) [(4)] Manufacturer--A person who holds a license issued by the Department to engage [or entity engaged] in the business of manufacturing new and unused taxable boats and outboard [boat] motors for the purpose of sale or trade.

(9) Participating county tax assessor-collector--A county tax assessor-collector in Texas that has an agreement with the Department to title and/or register taxable boats or outboard motors in Texas.

(10) Registered repair facility--A person engaged in the business of repairing, remodeling, maintaining, or restoring taxable boats or outboard motors that holds a current Texas sales and use tax permit issued under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(11) [(5)] Retail sale--An installment or credit [Any] sale of a taxable boat or outboard [boat] motor, an exchange of a taxable boat or outboard motor for property or money, or an exchange in which a taxable boat or outboard motor is transferred but the seller retains title as security for payment of the purchase price. The term does not include [other than] a sale in which the dealer, distributor, or manufacturer acquires the taxable boat or outboard [boat] motor for the ex-

clusive purpose of resale. Dealers, distributors, and manufacturers [; as defined,] are the only persons who [or entities that] may acquire a taxable boat or outboard [boat] motor for resale.

~~[(6) Tax assessor-collector--Any of the county tax assessors-collectors in the State of Texas.]~~

~~(12) [(7) Taxable boat--A vessel not more than 115 feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term [Any watercraft, other than a seaplane on water, not more than 65 feet in length. This] includes federally documented vessels [boats, motorboats], sailboats, personal watercraft [jet skis], and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and [Excluded from this definition are] canoes, kayaks, rowboats, [inflatable] rafts, punts, or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151. [These excluded watercraft are taxed under] (Limited Sales, Excise and Use Tax). [; unless some other exemption applies.]~~

~~(13) [(8)] Outboard [Taxable] motor--Any self-contained internal combustion propulsion system of any horsepower, excluding fuel supply, used to propel a vessel [watercraft,] that is detachable as a unit from the vessel [boat]. The term does not include electric [Electric] boat motors [are excluded].~~

~~(14) Temporary use permit--A non-renewable, non-transferable permit issued by the Department, an agent of the Department, or a participating county tax assessor-collector authorizing the temporary tax-free use of a taxable boat or outboard motor within the territorial boundaries of Texas for not more than 90 consecutive days from the date of issue. Only two temporary use permits may be issued for the same taxable boat or outboard motor within a calendar year. The second temporary use permit cannot be issued until 30 days after the date the first permit expires. The nonrefundable fee for the permit is \$150 per taxable boat or outboard motor.~~

~~(15) Territorial boundaries of Texas--All territory within the exterior borders of Texas. The offshore border of Texas extends nine nautical miles from the coastline of Texas.~~

~~(16) [(9)] Total consideration--The amount paid or to be paid for a taxable boat or outboard [boat] motor, including all accessories attached thereto at the time of [or before] the sale. The [This] amount includes payments by the purchaser for the costs of material, labor or service, interest paid, loss, or any other expense, transportation before the sale, [and] any manufacturer's or importer's excise tax imposed by the United States government, and any dealer's vessel and outboard motor inventory property tax imposed on the dealer and passed through to the purchaser. The amount also includes anything of monetary value received by the seller, such as cash or the equivalent; a book entry reflecting cash received or paid; the forgiveness or assumption of debt; book entries reflecting accounts receivable or accounts payable for an item; the performance of a service; or real or tangible personal property. The [This] amount does not include any separately stated discount, finance or interest charges, documentary [service] charges, transportation charges after the sale, or [other interest charges. Also excluded from total consideration will be] the value of another [a] taxable boat or outboard [boat] motor taken by the seller as all or part of the consideration for the sale of the taxable boat or outboard [boat] motor. [No other tangible, intangible, or real property will be excluded from total consideration. Also excluded from total consideration are charges for transportation of the boat or boat motor after the sale.]~~

(17) [(14)] Use--Any storage or other exercise of rights of ownership in Texas [this state] by any person [or entity,] excluding:

(A) the storage, display, or holding of a taxable boat or outboard [boat] motor exclusively for sale by a dealer, distributor, or manufacturer; or

(B) troubleshooting or testing of a taxable boat or outboard motor being repaired, remodeled, maintained, or restored by a registered repair facility under subsection (g)(1) of this section [; as defined in this subsection].

(18) Vessel--Any watercraft, other than a seaplane on water, used or capable of being used for transportation on water. The definition includes a ship, barge, taxable boat, yacht, or any watercraft designed to be propelled by paddle, oar or pole.

(b) General principles of taxation.

(1) The purchase of a taxable boat or outboard [and boat] motor and all accessories attached thereto at the time of sale in Texas is subject to [the boat and boat motor sales and use tax (Tax Code, Chapter 160, including the)]. The purchase of a taxable boat or outboard [boat] motor for purposes of lease or rental [is subject to Tax Code, Chapter 160].

(2) The lease or rental of a taxable boat or outboard motor in Texas is subject to Tax Code, Chapter 151, and cannot be purchased tax-free for resale.

(3) [(2)] The purchase of accessories for a taxable boat or outboard [and boat] motor attached after the time of sale of the taxable boat or outboard [boat] motor is subject to [the limited sales, excise, and use tax (Tax Code, Chapter 151)]. The rental of a taxable boat or boat motor is subject to Tax Code, Chapter 151.

(4) [(3)] The purchase of tangible personal property that cannot [is subject to the limited sales, excise, and use tax, if no item can] be identified as a taxable boat or outboard [boat] motor at the time of sale is subject to Tax Code, Chapter 151, even if the combination of items of tangible personal property later becomes a taxable boat or outboard [boat] motor. If items of tangible personal property are combined to create [produce] a taxable boat or outboard [boat] motor, the initial titling or registration of the taxable boat or outboard [boat] motor in the name of the person who created [produced] the taxable boat or outboard [boat] motor is not subject to [the provisions of the boat and boat motor sales and use tax] Tax Code, Chapter 160. If [; however,] the taxable boat or outboard [boat] motor is titled or registered in any other person's name, the taxable boat or outboard motor is considered transferred to that person and [transfer] is subject to Tax Code, Chapter 160 [the provisions of the boat and boat motor sales and use tax].

(5) [(4)] The purchase of safety [Safety] equipment required by [the] Parks and Wildlife Code, §§31.064-31.071, including life preservers and fire extinguishers, purchased with a taxable boat or outboard [boat] motor are considered to be attached to the taxable boat or outboard [boat] motor at the time of sale and subject to Tax Code, Chapter 160 [the provisions of the boat and boat motor sales and use tax].

(6) A taxable boat or outboard motor and all accessories attached thereto purchased outside of Texas and brought into Texas for use in Texas is subject to use tax under Tax Code, §160.022 (Use Tax), or in lieu of the use tax, a new resident use tax is due under Tax Code, §160.023 (New Resident), if the taxable boat or outboard motor and all accessories attached thereto are brought into Texas by a new resident of Texas.

(7) The purchase of a boat trailer is subject to motor vehicle sales and use tax under Tax Code, Chapter 152 (Taxes on Sale,

Rental, and Use of Motor Vehicles). The total consideration paid or to be paid for a boat trailer must be separately stated from the total consideration paid or to be paid for a taxable boat and/or outboard motor at the time the boat trailer is registered in Texas. For more information on the taxation of boat trailers, see §3.74 of this title (relating to Seller Responsibility) and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

(c) Imposition of the tax.

(1) A sales tax is imposed on each retail sale of a taxable boat or outboard [boat] motor transferred for consideration within the territorial boundaries of Texas [in this state].

(A) The sales tax rate is 6.25% of the total consideration paid or to be paid for each taxable boat or outboard motor sold. The total consideration paid or to be paid for a taxable boat must be separately stated from the total consideration paid or to be paid for an outboard motor. The total amount of sales tax due may not exceed \$18,750 for each taxable boat or outboard motor sold in Texas. The total amount of sales tax allowed applies separately to the taxable boat and outboard motor.

(B) The sales tax is the obligation of and shall be paid by the purchaser of the taxable boat or outboard [boat] motor. A [Although a boat] dealer who collects sales tax from the purchaser of a taxable boat or outboard motor [is not required to collect the tax under the Tax Code, if a dealer collects the tax] and does not remit the sales tax collected to either [a county tax assessor-collector or] the Department an agent of the Department, or a participating county tax assessor-collector [department, the dealer] is liable for the sales tax collected and any penalties that may apply.

(2) Use tax is imposed on the use in Texas of each taxable boat or outboard motor purchased outside of Texas and brought into Texas for use in Texas [The tax rate is 6.25% of total consideration paid or to be paid].

(A) The use tax rate is 6.25% of the total consideration paid or to be paid for the taxable boat or outboard motor, regardless of any use or depreciation of the taxable boat or outboard motor before the entry of the taxable boat or outboard motor into Texas. The total consideration paid or to be paid for a taxable boat must be separately stated from the total consideration paid or to be paid for each outboard motor.

(B) The use tax is an obligation of, and shall be paid by, the person who brings the taxable boat or outboard motor into Texas. The person obligated to pay Texas use tax may claim a credit against the use tax due at the time the taxable boat or outboard motor is titled and/or registered in Texas only for legally imposed state and local sales or use tax paid on the purchase of the taxable boat or outboard motor to another state, Puerto Rico, or a possession or territory of the United States by the purchaser of the taxable boat or outboard motor before entry into Texas. Acceptable proof of tax paid includes an out-of-state tax receipt, a seller's bill of sale, sales invoice, or sales contract identifying the amount of sales or use tax paid to another state on the sale of the taxable boat or outboard motor.

(C) A new resident use tax of \$15 is due in lieu of the use tax for each taxable boat or outboard motor owned by a new resident in any other state or foreign country and brought into Texas by the new resident if the taxable boat or outboard motor is brought into Texas by the new resident within 45 working days after becoming a new resident. The tax is an obligation of, and shall be paid by, the new resident who brings the taxable boat or outboard motor into Texas. A new resident cannot claim a credit against the new resident use tax due at the time the taxable boat or outboard motor is titled and/or registered in

Texas for any legally imposed state and local sales or use tax due and paid to another state on the purchase of the taxable boat or outboard motor.

(D) The use tax is not due on the use of a taxable boat or outboard motor brought into Texas for use in Texas if the taxable boat or outboard motor:

(i) is a federally documented vessel or has a current certificate of number or registration issued by a United States Coast Guard approved numbering system of another state;

(ii) is issued a temporary use permit that must be present on board the boat at all times while the taxable boat or outboard motor is located within the territorial boundaries of Texas; and

(iii) the boat or outboard motor is removed from the territorial boundaries of Texas on or before the expiration date of the temporary use permit.

(E) Subparagraphs (A) and (B) of this paragraph apply to the use of a taxable boat or outboard motor brought into Texas that remains within the territorial boundaries of Texas after the expiration date of the temporary use permit. Credit is not allowed for the \$150 temporary use permit fee against any Texas use tax that may be due.

(d) Payment of the tax.

(1) The seller and purchaser must complete an Application for Certificate of Title and/or Registration for each [After the completion of the seller, donor, or trader's affidavit for the] sale of a taxable boat or outboard [boat] motor in Texas, and: [;]

(A) if the seller collects the sales tax from the purchaser, the seller must remit the tax and the Application for Certificate of Title and/or Registration to either [a county tax assessor-collector or to] the Department, an agent of the Department, or a participating county tax assessor-collector [department] within 45 [20] working days from the date the taxable boat or outboard [boat] motor is delivered to the purchaser in Texas; or [;]

(B) [(2)] if the seller gives the Application for Certificate of Title and/or Registration [After the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor, the seller may give the original affidavit] to the purchaser, the [; The] purchaser is then required to remit the sales tax and the Application for Certificate of Title and/or Registration to either [a county tax assessor-collector or to] the Department, an agent of the Department, or a participating county tax assessor-collector [department] within 45 [20] working days from the date the taxable boat or outboard [boat] motor is delivered to the purchaser in Texas.

(2) [(3)] Persons who owe use tax must complete an Application for Certificate of Title and/or Registration and remit the use tax and the Application for Certificate of Title and/or Registration to either the Department, an agent of the Department, or a participating county tax assessor-collector [The payment of the boat or boat motor use tax is the responsibility of the user and is due] within 45 [20] working days after the date [that] the taxable boat or outboard [boat] motor is brought into Texas [this state].

(3) Persons transferring ownership of a taxable boat or outboard motor in Texas when no sales or use tax is due as a result of a tax exemption, even exchange, or gift of a taxable boat or outboard motor, must complete an Application for Certificate of Title and/or Registration indicating why no sales or use tax is due and file the Application for Certificate of Title and/or Registration with either the Department, an agent of the Department, or a participating county tax assessor-collector within 45 working days after the date the taxable boat or outboard motor is transferred in Texas.

(e) Failure of tax remittance by the selling dealer.

(1) If [Effective September 1, 1999, if] a purchaser paid sales [pays] tax imposed by Tax Code, §160.021 (Retail Sales Tax), to a selling dealer, and the dealer failed [fails] to remit the sales tax within 45 working days from the date of sale [in the time and manner required by Tax Code, §160.041(e)], the Department [department], agent of the Department [department], or participating county tax assessor-collector shall accept an application for Certificate of Title and/or Registration [a Texas certificate of number or certificate of title] for a taxable boat or outboard motor from the purchaser without payment of additional sales tax by the purchaser. The purchaser must provide proof that the sales tax was paid to the dealer. Acceptable proof includes an invoice, bill of sale, or a receipt signed by the dealer or its representative showing that the sales tax was paid to the dealer.

(2) The Department [department], agent of the Department [department], or participating county tax assessor-collector shall notify the comptroller [Comptroller] in writing of the dealer's failure to remit the tax. The notice must:

(A) be made before the 31st day after the date the application for Certificate of Title and/or Registration [title] is accepted;

(B) contain the name and address of the dealer; and

(C) include copies of documentation provided by the purchaser showing sales tax was paid to the dealer [seller].

(f) Purchase of tangible personal property or accessories [accessories/components] for resale.

(1) [Items combined into a boat or boat motor.] A properly completed resale certificate as provided under Tax Code, Chapter 151, [for in the Limited Sales, Excise, and Use Tax Act] may be used to purchase [purchasing] tangible personal property tax-free to be combined into a taxable boat or outboard [boat] motor held for sale in the purchaser's regular course of business.

(2) A properly completed resale certificate as provided under Tax Code, Chapter 151, may be used to purchase [This includes all] accessories tax-free that are included in a lump-sum [single sales] price for the accessory and taxable [; boat or outboard [; and boat] motor. [These accessories include water skis and tow ropes.] The lump-sum sales price is [will be] subject to the boat and boat motor sales and use tax.

(3) [(2)] Accessories purchased to be attached to a vessel [boat or boat motor that is] not subject to Tax Code, Chapter 160 [the boat and boat motor sales and use tax] (vessels over 115 [boats over 65] feet in length), are subject to Tax Code, Chapter 151 [the limited sales, excise, and use tax]. See also §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), and §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles).

(g) Exemptions and non-taxable transactions.

(1) Sales tax is not due on the sale of a taxable boat or outboard motor to a purchaser in Texas for use in another state or nation before any use in Texas, if:

(A) the purchaser gives the seller a written statement signed by the purchaser stating that the purchaser intends to remove the taxable boat or outboard motor from Texas to a designated state or nation, and either;

(B) removes the taxable boat or outboard motor from the territorial boundaries of Texas within 10 days of the date of sale;

(C) places the taxable boat or outboard motor in a registered repair facility for repair, remodeling, maintenance, or restoration within 10 days of the date of sale and then removes the taxable boat or outboard motor from the territorial boundaries of Texas within 20 days from the date the repair, remodeling, maintenance, or restoration is completed; or

(D) obtains a temporary use permit within the time limits described in this paragraph. The permit must be present on board the boat at all times while the taxable boat or outboard motor is located within the territorial boundaries of Texas.

(E) Noncompliance with the requirements in this paragraph will result in the loss of the exemption and sales tax is due on the sale of the taxable boat or outboard motor. Credit is not allowed for the \$150 temporary use permit fee against any sales tax that may be due.

(2) Sales or use tax is not due on the purchase or use of a taxable boat or outboard motor in Texas by:

(A) the State of Texas; its unincorporated agencies and instrumentalities; any county, city, special district or other political subdivision of the State of Texas; and any college or university created or authorized by the State of Texas;

(B) the United States; its unincorporated agencies and instrumentalities, including all independent boards, commissions, agencies, or instrumentalities chartered by the United States congress (e.g., the American Red Cross, Boy Scouts of America, Girl Scouts of America, etc.); and any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States; or

(C) any volunteer fire department or other department, company, or association organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services by members who receive no compensation or only nominal compensation for their services rendered, if the volunteer fire department or other department, company, or association uses the taxable boat or outboard motor exclusively for exempt purposes.

(3) Sales or use tax is not due on a taxable boat or outboard motor when:

(A) an insurer takes title to the taxable boat or outboard motor as a result of a total loss settlement or adjustment of an insurance claim for a damaged or stolen taxable boat or outboard motor; or

(B) a seller or lienholder takes possession of a taxable boat or outboard motor repossessed under a retail installment sales agreement, a chattel mortgage, or a security agreement.

(h) Refunds.

(1) Any person, or the person's attorney, assignee, or other successor may request from the comptroller a refund of any boat or boat motor sales and use tax paid in error.

(2) The request for a refund must:

(A) be in writing on Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax, available at comptroller.texas.gov, its electronic equivalent, or a successor form, promulgated by the comptroller;

(B) state fully and in detail the specific grounds upon which the claim is founded; and

(C) be filed within four years from the date on which the tax was due and payable and within the provisions of Tax Code, Chapter 111, Subchapter D (Limitations).

(D) The comptroller will require a person to submit additional information to verify the refund claim, including a copy of the title and tax receipt issued by the Department, agent of the Department, or participating county tax assessor-collector.

(3) The comptroller will notify the claimant if the comptroller determines that a refund claim cannot be granted in part or in full and will also notify the claimant which requirements were not met. The claimant may then request a refund hearing in accordance with Tax Code, §111.105 (Tax Refund: Hearing). A person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied by the comptroller.

(4) A person who intends to file suit under Tax Code, Chapter 112, Subchapter B (Suit After Protest Payment), must submit to the Department, agent of the Department, or participating county tax assessor-collector a letter of protest with the payment of the tax. The letter of protest must state fully and in detail the reason that the person contends that the assessment is unlawful or unauthorized. Upon receipt of the protest letter, the Department, agent of the Department, or participating county tax assessor-collector must immediately send the comptroller a copy of the protest letter and a copy of the tax receipt showing tax paid to the comptroller.

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 24, 2023.

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.49

The Texas Department of Public Safety (the department) proposes amendments to §15.49, concerning Proof of Domicile. The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety 90 days of the date of application to within one hundred eighty (180) days of the date of application.

Suzu Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses,

or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of acceptable proof of domicile documents for a non-commercial driver license or identification certificate.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.1426.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and §521.1426, are affected by this proposal.

§15.49. *Proof of Domicile.*

(a) To establish domicile in Texas for a non-commercial driver license or identification certificate, an applicant must reside in Texas for at least thirty (30) days prior to application. Applicants who surrender a valid, unexpired out-of-state driver license or identification certificate

are not required to reside in Texas for at least thirty (30) days prior to application.

(b) In order to prove domicile, all original applicants for a driver license or identification certificate must present two acceptable documents verifying the applicant's residential address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate driver license or identification certificate to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and residential address, from the acceptable proof of domicile list in subsection (e) of this section. At least one of the documents presented must demonstrate that the applicant has resided in Texas for at least thirty (30) days prior to application.

(e) Acceptable proof of domicile documents are:

(1) A current deed, mortgage, monthly mortgage statement, mortgage payment booklet, or a residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas concealed handgun license or license to carry.

(6) A utility or residential service bill dated within one hundred eighty (180) ~~ninety (90)~~ days of the date of application. Examples of acceptable statement include, but are not limited to: electric, water, gas, internet, cable, streaming services, lawn service, cellular telephone, etc.

(7) A Selective Service card.

~~[(8) A medical or health card.]~~

(8) ~~[(9)]~~ A current homeowners or renters insurance policy or statement.

(9) ~~[(10)]~~ A current automobile insurance policy, card, or statement.

(10) ~~[(11)]~~ A Texas high school, college, or university report card or transcript for the current school year.

(11) ~~[(12)]~~ A pre-printed W-2, 1099, or 1098 tax form from an employer, government, or financial entity for the most recent tax year.

(12) ~~[(13)]~~ Mail or printed electronic statements from financial institutions; including checking, savings, investment account, and credit card statements dated within one hundred eighty (180) ~~ninety (90)~~ days of the date of application.

(13) ~~[(14)]~~ Mail or printed electronic statements from a federal, state, county, or city government agency dated within one hundred eighty (180) ~~ninety (90)~~ days of the date of application.

(14) ~~[(15)]~~ A current automobile payment booklet or statement.

(15) ~~[(16)]~~ A pre-printed paycheck or payment stub dated within one hundred eighty (180) ~~ninety (90)~~ days of the date of application.

(16) ~~[(17)]~~ Current documents issued by the U.S. military indicating residence address.

(17) [(18)] A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(18) [(19)] Current Form DS2019 or a document issued by the United States Citizenship and Immigration Services.

(19) A valid, unexpired Texas fishing or hunting license.

(20) A letter of medical Explanation of Benefits or medical bills dated within one hundred eighty (180) days of the date of application.

(f) Both documents may be from the same source if the source is a local governmental entity or service provider that provides multiple residential services. For example, an individual may use a water and gas bill from the same municipal utility if they are on separate statements. Documents from the same source for different months will not be accepted.

(g) Mail addressed with a forwarding label or address label affixed to the envelope or contents is not acceptable.

(h) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit executed by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include, but are not limited to:

- (i) a marriage license;
- (ii) military dependent identification card;
- (iii) birth certificate; and
- (iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present valid identification as defined under §15.24 of this title (relating to Identification of Applicants), and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (e) of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, group/half way house, or college/university certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail or services for the individual or completed Texas Residency Affidavit (DL-5).

(i) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, or currently incarcerated in a Texas Department of Criminal Justice facility.

(j) Minors under the conservatorship of the Department of Family and Protective Services (DFPS) and individuals under the age of 21 in DFPS paid foster care are not required to comply with subsection (b) of this section and may present an approved DFPS residency form signed by a DFPS caseworker or caregiver as proof of the applicant's residential address in Texas.

(k) Homeless youth, defined by 42 U.S.C. §11434a, may present a letter certifying the child or youth does not have a residence from:

- (1) the school district in which the child is enrolled;
- (2) the director of an emergency shelter or transitional housing program;
- (3) the director of a basic center for runaway and homeless youth; or
- (4) a transitional living program.

(l) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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 21, 2023.

TRD-202301435

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 424-5848



SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.174

The Texas Department of Public Safety (the department) proposes new §15.174, regarding Interagency Application Fees. This new rule outlines the fees related to interagency application for driver licenses and personal identification certificates to qualified inmates preparing for release by Texas agencies who have entered into a memorandum of understanding with the department under §15.171 of this title and is authorized by §521.421, Transportation Code.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of driver licenses or identification certificates issued to qualified inmates prior to release.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; and §521.421.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.005 and §521.421, are affected by this proposal.

§15.174. Interagency Application Fees.

(a) Texas agencies may enter into a memorandum of understanding with the department based on §15.171 of this title (relating to Identifying Document for Offenders/Memorandum of Understanding) that allows the issuance of driver licenses and personal identification certificates.

(b) Texas agencies that adopt and issue an original, renewal, or duplicate personal identification (ID) certificates, are required to provide the proper fee for each processed ID certificate application.

(1) The fee for an original or renewed ID card is \$5; and

(2) The fee for a duplicate ID card is the statutory fee of \$10.

(c) Texas agencies that adopt and issue an original, renewal, or duplicate driver license (DL), are required to provide the proper fee for each processed DL application.

(1) The fee for an original or renewed driver license is \$5; and

(2) The fee for a duplicate driver license is the statutory fee of \$10.

(d) Texas agencies that adopt and issue an original, renewal, or duplicate commercial driver license (CDL), are required to provide the proper fee for each processed CDL application. The fees for commercial driver license transactions are established in Transportation Code, §522.029.

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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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.7

The Texas Department of Public Safety (the department) proposes amendments to §16.7, concerning Proof of Domicile. The proposed rule amendment increases the number of acceptable proof of domicile documents and changes the validity period from within ninety (90) days of the date of application to within one hundred eighty (180) of the date of application.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be an increased number of acceptable proof of domicile documents for a commercial driver license.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that 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.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does not expand, limit or repeal an existing regulation. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability. During the first five years the proposed rule is in effect the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Charles McInnis, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLRulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and §522.0225.

Texas Government Code, §411.004(3), and Texas Transportation Code, §522.005 and, §522.0225, are affected by this proposal.

§16.7. Proof of Domicile.

(a) A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(b) In order to prove domicile, all original applicants for a CDL must present two acceptable documents verifying the applicant's domicile address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate CDL to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and domicile address, from the acceptable proof of domicile list in subsection (e) of this section.

(e) Acceptable proof of domicile documents are:

- (1) A current deed, mortgage, monthly mortgage statement, mortgage payment booklet, or a residential rental/lease agreement.
- (2) A valid, unexpired Texas voter registration card.
- (3) A valid, unexpired Texas motor vehicle registration or title.
- (4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas license to carry a handgun or license to carry.

(6) A utility or residential service bill dated within one hundred eighty (180) [ninety (90)] days of the date of application. Example of acceptable statements include, but are not limited to: electric, water, gas, internet, cable, streaming services, lawn service, cellular telephone, etc.

(7) A Selective Service card.

~~[(8) A medical or health card.]~~

(8) ~~[(9)]~~ A current homeowners or renters insurance policy or statement.

(9) ~~[(10)]~~ A current automobile insurance policy, card, or statement.

(10) ~~[(11)]~~ A Texas high school, college, or university report card or transcript for the current school year.

(11) ~~[(12)]~~ A pre-preprinted W-2, 1099, or 1098 form from an employer, government, or financial entity for the most recent tax year.

(12) ~~[(13)]~~ Mail or printed electronic statements from financial institutions; including checking, savings, investment account, and credit card statements dated within one hundred eighty (180) [90] days of the date of application.

(13) ~~[(14)]~~ Mail or printed electronic statements from a federal, state, county, or city government agency dated within one hundred eighty (180) [90] days of the date of application.

(14) ~~[(15)]~~ A current automobile payment booklet or statement.

(15) ~~[(16)]~~ A pre-printed paycheck or payment stub dated within one hundred eighty (180) [ninety (90)] days of the date of application.

(16) ~~[(17)]~~ Current documents issued by the U.S. military indicating residence address.

(17) ~~[(18)]~~ A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(18) A valid, unexpired Texas fishing or hunting license.

(19) A letter of medical Explanation of Benefits or medical bills dated within one hundred eighty (180) days of the date of application.

(f) Both documents may be from the same source if the source is a local governmental entity or service provider that provides multiple residential services. For example, an individual may use a water and gas bill from the same municipal utility if they are on separate statements. Documents from the same source for different months will not be accepted.

(g) Mail addressed with a forwarding label or address label affixed to the envelope or contents is not acceptable.

(h) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit executed by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and

present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include but are not limited to:

- (i) marriage license;
- (ii) military dependent identification card;
- (iii) birth certificate; and
- (iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present valid identification as defined under §15.24 of this title (relating to Identification of Applicants), and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (e) [(e)] of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, group/half way house, or college/university certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail or services for the individual or completed Texas Residency Affidavit (DL-5).

(i) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, or currently incarcerated in a Texas Department of Criminal Justice facility.

(j) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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 21, 2023.

TRD-202301437

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: June 4, 2023

For further information, please call: (512) 424-5848

