

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 18. GENERAL RULES CONCERNING REPORTS

##### 1 TAC §18.31

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

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2024, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in the statutes listed in Figures 1 through 5 of 18.31 are also duplicated in numerous Commission rules, and therefore those rules must be similarly adjusted so they are consistent; amendments to these rules have been submitted concurrently with this proposal.

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

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

The General Counsel has determined that during the first five years that the proposed amended rule is in effect, they will:

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

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

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

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

##### *§18.31. Adjustments to Reporting Thresholds.*

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

Figure 1: 1 TAC §18.31(a)

~~[Figure 1: 1 TAC §18.31(a)]~~

Figure 2: 1 TAC §18.31(a)

~~[Figure 2: 1 TAC §18.31(a)]~~

Figure 3: 1 TAC §18.31(a)

~~[Figure 3: 1 TAC §18.31(a)]~~

Figure 4: 1 TAC §18.31(a)

~~[Figure 4: 1 TAC §18.31(a)]~~

Figure 5: 1 TAC §18.31(a)

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

(c) The effective date of this rule is January 1, 2024 ~~[2023]~~.

(d) In this section:

- (1) "CEC" means county executive committee;
- (2) "DCE" means direct campaign expenditure-only filer;
- (3) "GPAC" means general-purpose political committee;
- (4) "MPAC" means monthly-filing general-purpose political committee;

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

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

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Texas Ethics Commission

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



## CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission proposes amendments to Texas Ethics Commission rules in Chapter 20, Texas Administrative Code (TAC). Specifically, the Commission proposes amendments to §20.62, regarding Reporting Staff Reimbursement, and §20.65, regarding Reporting No Activity; §20.217, regarding Modified Reporting, §20.219, regarding Content of Candidate's Sworn Report of Contributions and Expenditures, §20.220, regarding Additional Disclosure for the Texas Comptroller of Public Accounts, and §20.221, regarding Special Pre-Election Report by Certain Candidates; §20.275, regarding Exception from Filing Requirement for Certain Local Officeholders, and §20.279, regarding Contents of Officeholder's Sworn Report of Contributions and Expenditures, §20.301, regarding Thresholds for Campaign Treasurer Appointment, §20.303, regarding Appointment of Campaign Treasurer, §20.313, regarding Converting to a General-Purpose Committee, §20.329, regarding Modified Reporting, §20.331, regarding Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures, and §20.333, regarding Special Pre-Election Report by Certain Specific-Purpose Committees; §20.401, regarding Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee, §20.405, regarding Campaign Treasurer Appointment for a General-Purpose Committee, §20.431 regarding Monthly Reporting, §20.433 regarding Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures, §20.434, regarding Alternate Reporting Requirements for General-Purpose Committees, and §20.435, regarding Special Pre-Election Reports by Certain General-Purpose Committees; §20.553, regarding County Executive Committee Accepting Contributions or Making Expenditures Under Certain Amount, and §20.555, regarding County Executive Committee Accepting Contributions or Making Expenditures That Exceed Certain Amount.

Section 571.064(b) of the Texas Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of \$10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the

Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2024, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in 1 TAC §18.31 are also duplicated in 27 different rules, some of which are referenced above; this includes changes to 117 different thresholds. Rather than amending 117 different thresholds annually, the Ethics Commission is proposing to strike the dollar amount in the 27 affected rules. Instead, the rule will simply reference the chart in Section 18.31. Replacing a dollar amount with a reference to the chart will allow the Commission to amend only the chart in future years, will increase clarity to the public and provide notice that each reporting threshold is subject to annual adjustment. Amendments to the affected rules are included with the amendments to Figures 1 through 5 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

### SUBCHAPTER B. GENERAL REPORTING RULES

#### 1 TAC §20.62, §20.65

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

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

*§20.62. Reporting Staff Reimbursement.*

(a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed the amount specified by Figure 5 in 1 TAC §18.31, [\$6,910] during the reporting period may be reported as follows IF the reimbursement occurs during the same reporting period that the initial expenditure was made:

(1) the amount of political expenditures that in the aggregate exceed the amount specified in Tex. Elec. Code §254.031(a)(3), as amended by Figure 1 in 1 TAC §18.31 [\$200] and that are made during the reporting period, the full names and addresses of the persons to whom the expenditures are made and the dates and purposes of the expenditures; and

(2) included with the total amount or a specific listing of the political expenditures of the amount specified in Tex. Elec. Code §254.031(a)(5), as amended by Figure 1 in 1 TAC §18.31 [\$200] or less made during the reporting period.

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

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

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

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

*§20.65. Reporting No Activity.*

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

(b) This general rule does not apply to:

(1) special pre-election reports;

(2) special session reports; or

(3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than the aggregate amount of political contributions or make more than the aggregate amount of political expenditures specified in Tex. Elec. Code §254.095, as amended by Figure 1 in 1 TAC §18.31 [\$1,010 in political contributions or make more than \$1,010 in political expenditures] during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only

those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

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

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SUBCHAPTER C. REPORTING REQUIREMENTS FOR A CANDIDATE

**1 TAC §§20.217, 20.219 - 20.221**

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

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

*§20.217. Modified Reporting.*

(a) An opposed candidate who does not intend to accept more than the aggregate amount of political contributions or make more than the aggregate amount of political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.181(a), as amended by Figure 1 in 1 TAC §18.31 [\$1,010 in political contributions or make more than \$1,010 in political expenditures (excluding filing fees)] in connection with any election in an election cycle may choose to file under the modified schedule.

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

(c) To select modified filing, a candidate must file a declaration of intent not to exceed [aecept] more than the amount of political contributions or political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.182(a), as amended by Figure 1 in 1 TAC §18.31 [\$1,010 in political contributions or make more than \$1,010 in political expenditures (excluding filing fees)] in connection with the election. The declaration must include a statement that the candidate understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

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

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

(f) If an opposed candidate exceeds either of the [\$1,010] limits specified in Tex. Elec. Code §254.182(a), as amended by Figure 1 in 1 TAC §18.31, the candidate must file reports under §20.213 of this

title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the ~~[\$1,010]~~ limits specified in Tex. Elec. Code §254.182(a), as amended by Figure 1 in 1 TAC §18.31 after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise, the period begins on the first day after the period covered by the last report required by this subchapter (other than a special pre-election report or a special session report) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

*§20.219. Content of Candidate's Sworn Report of Contributions and Expenditures.*

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the candidate's full name;
- (2) the candidate's address;
- (3) the office sought by the candidate, if known;
- (4) the identity and date of the election for which the report is filed, if known;
- (5) the campaign treasurer's name;
- (6) the campaign treasurer's telephone number;
- (7) the campaign treasurer's residence or business street address;
- (8) for each political committee from which the candidate received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):
  - (A) the committee's full name;
  - (B) the committee's address;
  - (C) identification of the political committee as a general-purpose or a specific-purpose committee;
  - (D) the full name of the committee's campaign treasurer; and
  - (E) the address of the committee's campaign treasurer;
- (9) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:
  - (A) the full name of the business to which the expenditure was made;
  - (B) the address of the person to whom the expenditure was made;
  - (C) the date of the expenditure;
  - (D) the purpose of the expenditure; and
  - (E) the amount of the expenditure;

(10) for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~ in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~ in value:

- (A) the full name of the person making the contribution;
- (B) the address of the person making the contribution;
- (C) the total amount of contributions;
- (D) the date each contribution was accepted; and
- (E) a description of any in-kind contribution;

(11) for each person from whom the candidate accepted a pledge or pledges to provide more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~ in money, or goods or services ~~[worth more than \$100]~~:

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the amount of each pledge;
- (D) the date each pledge was accepted;
- (E) a description of any goods or services pledged; and

(F) the total of all pledges accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~ and less from a person, except those reported under subparagraphs (A)-(E) of this paragraph;

(12) for each person making a loan or loans to the candidate for campaign purposes, if the total amount loaned by the person during the period is more than the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~:

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
  - (i) the full name of each guarantor;
  - (ii) the address of each guarantor;
  - (iii) the principal occupation of each guarantor;
  - (iv) the name of the employer of each guarantor; and
  - (v) the amount guaranteed by each guarantor;

(13) the total amount of loans accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 ~~[\$100]~~ and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under paragraph (12) of this section;

(14) for political expenditures made during the reporting period that total more than the amount specified in Tex. Elec. Code §254.031(a)(3), as amended by Figure 1 in 1 TAC §18.31 [\$200] to a single payee, other than expenditures reported under paragraph (9) of this section:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(15) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure;
- (E) a declaration that the expenditure was made out of personal funds;
- (F) a declaration that reimbursement from political contributions is intended; and
- (G) the amount of the expenditure;

(16) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (9) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(17) for each other candidate or officeholder who benefits from a direct campaign expenditure made by the candidate during the reporting period:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(18) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(19) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(9), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(20) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(10), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(21) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(12), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(22) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(11), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(23) the full name and address of each person from whom an amount described by paragraph (19), (20), (21), or (22) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(24) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of the amount specified in Tex. Elec. Code §254.031(a)(1) and (1-a), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of the amount specified in Tex. Elec. Code §254.031(a)(5), as amended by Figure 1 in 1 TAC §18.31 [\$200] and less; and

(E) the total amount of all political expenditures; and

(25) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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

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

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

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

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

(1) for each vendor whose aggregate campaign contributions equal or exceed the amount specified by Figure 5 in 1 TAC §18.31 [\$650] during the reporting period, a notation that:

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

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

(2) for each political committee directly established, administered, or controlled by a vendor whose aggregate campaign contributions equal or exceed the amount specified by Figure 5 in 1 TAC §18.31 [~~§650~~] during the reporting period, a notation that the contributor was a political committee directly established, administered, or controlled by a vendor during the reporting period or during the 12-month period preceding the last day covered by the report.

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

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

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

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

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

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

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

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

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

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

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

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

(b) An opposed candidate for an office specified by §252.005(1), Election Code, who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed the amount specified in Tex. Elec. Code §254.038(a)(1), as amended by Figure 1 in 1 TAC §18.31 [~~§2,020~~] must file special pre-election reports.

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

candidate accepts a contribution from a person that triggers the requirement to file the special pre-election report.

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

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

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

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

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

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

### 1 TAC §20.275, §20.279

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

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

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

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

(1) is required to file with an authority other than the commission;

(2) does not have a campaign treasurer appointment on file; and

(3) does not accept more than the aggregate amount of political contributions or make more than the aggregate amount of political expenditures specified in Tex. Elec. Code §254.095, as amended by Figure 1 in 1 TAC §18.31 [~~\$1,010 in political contributions or make more than \$940 in political expenditures~~] during the reporting period.

§§20.279. *Contents of Officeholder's Sworn Report of Contributions and Expenditures.*

An officeholder's semiannual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

- (1) the officeholder's full name;
- (2) the officeholder's address;
- (3) the office held by the officeholder;

(4) for each political committee from which the officeholder received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

- (A) the committee's full name;
- (B) the committee's address;
- (C) identification of the political committee as a general-purpose or a specific-purpose committee;
- (D) the full name of the committee's campaign treasurer; and
- (E) the address of the committee's campaign treasurer;

(5) on a separate page, the following information for each expenditure from political contributions made to a business in which the officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

- (A) the full name of the business to which the expenditure was made;
- (B) the address of the business to which the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(6) for each person from whom the officeholder accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] in value:

- (A) the full name of the person making the contribution;
- (B) the address of the person making the contribution;
- (C) the total amount of contributions;
- (D) the date each contribution was accepted; and
- (E) a description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] in money or goods or services [~~worth more than \$100~~]:

- (A) the full name of the person making the pledge;
- (B) the address of the person making the pledge;
- (C) the amount of each pledge;
- (D) the date each pledge was accepted; and
- (E) a description of any goods or services pledged;

(8) the total of all pledges accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] and less from a person, except those reported under paragraph (7) of this section;

(9) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned by the person during the period is more than the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~]:

- (A) the full name of the person or financial institution making the loan;
- (B) the address of the person or financial institution making the loan;
- (C) the amount of the loan;
- (D) the date of the loan;
- (E) the interest rate;
- (F) the maturity date;
- (G) the collateral for the loan, if any; and
- (H) if the loan has guarantors:
  - (i) the full name of each guarantor;
  - (ii) the address of each guarantor;
  - (iii) the principal occupation of each guarantor;
  - (iv) the name of the employer of each guarantor; and
  - (v) the amount guaranteed by each guarantor;

(10) the total amount of loans accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (9) of this section;

(11) for political expenditures made during the reporting period that total more than the amount specified in Tex. Elec. Code §254.031(a)(3), as amended by Figure 1 in 1 TAC §18.31 [~~\$200~~] to a single payee, other than expenditures reported under paragraph (5) of this section:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(12) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of each expenditure;
- (D) the purpose of the expenditure;
- (E) a declaration that the expenditure was made from personal funds;
- (F) a declaration that reimbursement from political contributions is intended; and
- (G) the amount of the expenditure;

(13) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(14) for each candidate or other officeholder who benefits from a direct campaign expenditure made by the officeholder during the reporting period:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(15) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(16) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(9), as amended by Figure 1 in 1 TAC §18.31 [§130];

(17) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(10), as amended by Figure 1 in 1 TAC §18.31 [§130];

(18) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(12), as amended by Figure 1 in 1 TAC §18.31 [§130];

(19) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(11), as amended by Figure 1 in 1 TAC §18.31 [§130];

(20) the full name and address of each person from whom an amount described by paragraph (16), (17), (18), or (19) of the section is received, the date the amount is received, and the purpose for which the amount is received;

(21) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of the amount specified in Tex. Elec. Code §254.031(a)(1) and (1-a), as amended by Figure 1 in 1 TAC §18.31 [§100] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of the amount specified in Tex. Elec. Code §254.031(a)(5), as amended by Figure 1 in 1 TAC §18.31 [§200] and less; and

(E) the total amount of all political expenditures; and

(22) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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



## SUBCHAPTER E. REPORTS BY A SPECIFIC-PURPOSE COMMITTEE

### 1 TAC §§20.301, 20.303, 20.313, 20.329, 20.331, 20.333

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

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

#### §20.301. *Thresholds for Campaign Treasurer Appointment.*

(a) A specific-purpose committee may not accept political contributions exceeding the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980] without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980] to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment as filed not later than the 30th day before the appropriate election day:

- (1) a statewide office;
- (2) a seat in the state legislature;

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

§20.303. *Appointment of Campaign Treasurer.*

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

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980] in political contributions or expenditures.

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

§20.313. *Converting to a General-Purpose Committee.*

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

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

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

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

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

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980 in political expenditures or §980 in political contributions] as a general-purpose committee.

§20.329. *Modified Reporting.*

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than the aggregate amount of political contributions or make more than the aggregate amount of political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.182(a), as amended by Figure 1 in 1 TAC §18.31 [§1,010 in political contributions or make more than §1,010 in political expenditures (excluding filing fees)] in connection with any election in an election cycle.

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

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than the aggregate amount of political contributions or make more than the aggregate amount of political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.182(b), as amended by Figure 1 in 1 TAC §18.31 [§1,010 in political contributions or make more than §1,010 in political expenditures (excluding filing fees)] in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report.

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

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

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds either of the aggregate limits in political contributions or political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.183(a), as amended by Figure 1 in 1 TAC §18.31 [§1,010] limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the aggregate limits in political contributions or political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.183(b), as amended by Figure 1 in 1 TAC §18.31 [§1,010] limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

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

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

(h) A specific-purpose committee that exceeds either of the aggregate limits in political contributions or political expenditures (excluding filing fees) specified in Tex. Elec. Code §254.183(a), as amended by Figure 1 in 1 TAC §18.31 [§1,010 limits] for modified reporting after the 30th day before the election and on or before the 10th day before the election must file a report under §20.325(f) of this title, in addition to any required special pre-election reports.

§20.331. *Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures.*

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the full name of the specific-purpose committee;

- (2) the address of the specific-purpose committee;
- (3) the full name of the specific-purpose committee's campaign treasurer;
- (4) the residence or business street address of the specific-purpose committee's campaign treasurer;
- (5) the committee campaign treasurer's telephone number;
- (6) the identity and date of the election for which the report is filed, if applicable;
- (7) for each candidate supported or opposed by the specific-purpose committee:
  - (A) the full name of the candidate;
  - (B) the office sought by the candidate; and
  - (C) an indication of whether the committee supports or opposes the candidate;
- (8) for each officeholder assisted by the specific-purpose committee:
  - (A) the full name of the officeholder;
  - (B) the office held by the officeholder; and
  - (C) an indication of whether the committee supports or opposes the officeholder;
- (9) for each measure supported or opposed by the specific-purpose committee:
  - (A) a description of the measure; and
  - (B) an indication of whether the committee supports or opposes the measure;
- (10) for each political expenditure by the committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the specific-purpose committee during the reporting period:
  - (A) the amount returned;
  - (B) the full name of the person to whom the expenditure was originally made;
  - (C) the address of the person to whom the expenditure was originally made; and
  - (D) the date the expenditure was returned to the specific-purpose committee;
- (11) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:
  - (A) the full name of the business to which the expenditure was made;
  - (B) the address of the business to which the expenditure was made;
  - (C) the date of the expenditure;
  - (D) the purpose of the expenditure; and
  - (E) the amount of the expenditure;
- (12) if the specific-purpose committee supports or opposes measures exclusively, for each contribution accepted from a labor or-

ganization or corporation, as defined by §20.1 of this title (relating to Definitions):

- (A) the date each contribution was accepted;
  - (B) the full name of the corporation or labor organization making the contribution;
  - (C) the address of the corporation or labor organization making the contribution;
  - (D) the amount of the contribution; and
  - (E) a description of any in-kind contribution;
- (13) for each person from whom the specific-purpose committee accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in value:
- (A) the full name of the person;
  - (B) the address of the person;
  - (C) the total amount of contributions;
  - (D) the date each contribution was accepted; and
  - (E) a description of any in-kind contribution;
- (14) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in money or to provide goods or services [worth more than \$100]:
- (A) the full name of the person making a pledge;
  - (B) the address of the person making a pledge;
  - (C) the amount of the pledge;
  - (D) the date each pledge was accepted; and
  - (E) a description of any goods or services pledged;
- (15) the total of all pledges accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less from a person, except those reported under paragraph (14) of this section;
- (16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes, if the total amount loaned by the person during the period is more than the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [\$100]:
- (A) the full name of the person or financial institution making the loan;
  - (B) the address of the person or financial institution making the loan;
  - (C) the amount of the loan;
  - (D) the date of the loan;
  - (E) the interest rate;
  - (F) the maturity date;
  - (G) the collateral for the loan, if any; and
  - (H) if the loan has guarantors:

- (i) the full name of each guarantor;
- (ii) the address of each guarantor;
- (iii) the principal occupation of each guarantor;
- (iv) the name of the employer of each guarantor; and
- (v) the amount guaranteed by each guarantor;

(17) the total amount of loans accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (16) of this section;

(18) for political expenditures made during the reporting period that total more than the amount specified in Tex. Elec. Code §254.031(a)(3), as amended by Figure 1 in 1 TAC §18.31 [\$200] to a single payee:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(19) for each direct campaign expenditure benefiting a candidate or officeholder, except for a direct campaign expenditure made by a committee supporting only one candidate or officeholder:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(20) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (11) of this section:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure; and
- (E) the amount of the expenditure;

(21) for each political contribution accepted from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(22) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(9), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(23) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(10), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(24) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(12), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(25) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(11), as amended by Figure 1 in 1 TAC §18.31 [\$130];

(26) the full name and address of each person from whom an amount described by paragraph (22), (23), (24), or (25) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(27) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of the amount specified in Tex. Elec. Code §254.031(a)(1) and (1-a), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less;

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of the amount specified in Tex. Elec. Code §254.031(a)(5), as amended by Figure 1 in 1 TAC §18.31 [\$200] and less; and

(E) the total amount of all political expenditures; and

(28) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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

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

(b) A campaign treasurer for a specific-purpose committee for supporting or opposing a candidate for an office specified by §252.005(1), Election Code, that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed the amount specified in Tex. Elec. Code §254.038(a)(2), as amended by Figure 1 in 1 TAC §18.31 [\$2,020] must file special pre-election reports.

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

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

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

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

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

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



## SUBCHAPTER F. REPORTING REQUIREMENT FOR A GENERAL PURPOSE COMMITTEE

### 1 TAC §§20.401, 20.405, 20.431, 20.433 - 20.435

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

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

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

(a) A general-purpose committee may not accept political contributions exceeding the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980 and may not make or authorize political expenditures exceeding §980] without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980] to support or oppose a candidate in a primary or general election for the following:

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

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

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

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded the aggregate amount of political contributions or political expenditures specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [§980] in political contributions or expenditures.

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

*§20.431. Monthly Reporting.*

(a) A monthly report filed by a general-purpose committee shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the threshold reporting amounts specified in Tex. Elec. Code §254.031(a)(1), (1-a), (2) and (5), as amended by Figure 1 in 1 TAC §18.31 [of \$100 set out in §20.433(1)-(16), and (20) of this title] does not apply to a general-purpose committee reporting monthly. For a general-purpose committee reporting monthly, the threshold reporting amount is the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31 [under §20.433(1)-(16) and (20) of this title is \$20], except as provided by §20.434 of this title (relating to Alternate Reporting Requirements for Certain General-Purpose Committees).

(b) A monthly report is due not later than the fifth day of the month following the end of the period covered by the report. A monthly report covering the month preceding an election in which the committee is involved must be received by the authority with whom the report is required to be filed no later than the fifth day of the month following the end of the period covered by the report.

(c) Except for the first monthly report filed, a monthly report covers a period that begins on the 26th day of one month and ends on the 25th day of the next month.

(d) The beginning day for the first monthly report filed by a general-purpose committee shall be as follows.

(1) For a general-purpose committee that has been filing on the regular schedule and chooses monthly filing between January 1 and January 15 of a particular year, the first report will cover a period that begins on January 1 of that year.

(2) For a general-purpose committee that elected to file monthly at the time it filed its campaign treasurer appointment, the period covered by the first monthly report depends on the day of the month that the campaign treasurer was appointed.

(A) If the general-purpose committee filed its campaign treasurer appointment before the 25th of the month, the first report will cover a period that begins on the day the appointment was filed and ends on the 25th day of the same month.

(B) If the general-purpose committee filed its campaign treasurer appointment on or after the 25th of the month, the first report will cover the period that begins on the day the appointment is filed and ends on the 25th day of the next month.

*§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures.*

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the full name of the general-purpose committee;
- (2) the address of the general-purpose committee;
- (3) the full name of the general-purpose committee's campaign treasurer;
- (4) the residence or business street address of the general-purpose committee's campaign treasurer;
- (5) the committee campaign treasurer's telephone number;
- (6) the identity and date of the election for which the report is filed, if applicable;
- (7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;
- (8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;
- (9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):
  - (A) the date each contribution was accepted;
  - (B) the full name of the corporation or labor organization making the contribution;
  - (C) the address of the corporation or labor organization making the contribution;
  - (D) the amount of the contribution; and
  - (E) a description of any in-kind contribution;
- (10) for each political expenditure by the general-purpose committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:
  - (A) the amount returned;
  - (B) the full name of the person to whom the expenditure was originally made;
  - (C) the address of the person to whom the expenditure was originally made; and
  - (D) the date the expenditure was returned to the general-purpose committee;
- (11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in value, or political contributions other than pledges or loans that total more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in value (~~or more than \$20~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31):
  - (A) the date each contribution was accepted;
  - (B) the full name of the person making the contribution;
  - (C) the address of the person making the contribution;

(D) the principal occupation of the person making the contribution;

(E) the amount of the contribution; and

(F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] in money or to provide goods or services [~~worth more than \$100~~] (~~[more than \$20]~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the principal occupation of the person making the pledge;

(D) the amount of each pledge;

(E) the date each pledge was accepted; and

(F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(1), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less from a person, except for those reported under paragraph (12) of this subsection;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes, if the total amount loaned by the person during the period is more than the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [\$100] (~~[more than \$20]~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for the amount specified in Tex. Elec. Code §254.031(a)(2), as amended by Figure 1 in 1 TAC §18.31 [\$100] and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total more than the amount specified in Tex. Elec. Code §254.031(a)(3), as amended by Figure 1 in 1 TAC §18.31 [~~\$200~~] (~~more than \$20~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31) to a single payee:

- (A) the full name of the person to whom each expenditure was made;
- (B) the address of the person to whom the expenditure was made;
- (C) the date of the expenditure;
- (D) the purpose of the expenditure;
- (E) the amount of the expenditure; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(17) for each non-political expenditure made from political contributions:

- (A) the date of each expenditure;
- (B) the full name of the person to whom the expenditure was made;
- (C) the address of the person to whom the expenditure was made;
- (D) the purpose of the expenditure;
- (E) the amount of the expenditure; and
- (F) indication for an expenditure paid in full or in part from corporations or labor organizations that it was paid from such sources.

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

- (A) the name of the candidate or officeholder; and
- (B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(9), as amended by Figure 1 in 1 TAC §18.31 [~~\$130~~];

(21) any proceeds of the sale of an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(10), as amended by Figure 1 in 1 TAC §18.31 [~~\$130~~];

(22) any other gain from a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(12), as amended by Figure 1 in 1 TAC §18.31 [~~\$130~~];

(23) any investment purchased with a political contribution that is received during the reporting period and the amount of which exceeds the amount specified in Tex. Elec. Code §254.031(a)(11), as amended by Figure 1 in 1 TAC §18.31 [~~\$130~~];

(24) the full name and address of each person from whom an amount described by paragraph (20), (21), (22), or (23) of this section is received, the date the amount is received, and the purpose for which the amount is received;

(25) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of the amount specified in Tex. Elec. Code §254.031(a)(1) and (1-a), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] and less (~~\$20 and less~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of the amount specified in Tex. Elec. Code §254.031(a)(5), as amended by Figure 1 in 1 TAC §18.31 [~~\$200~~] and less (~~\$20 and less~~) for a general-purpose committee reporting monthly, use the amount specified in Tex. Elec. Code §254.156, as amended by Figure 1 in 1 TAC §18.31); and

(E) the total amount of all political expenditures; and

(26) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

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

(a) This section and Election Code §254.1541 apply only to a general-purpose committee with less than the amount specified in Tex. Elec. Code §254.1541(a), as amended by Figure 1 in 1 TAC §18.31 [~~\$29,300~~] in one or more accounts maintained by the committee in which political contributions are deposited, as of the last day of the preceding reporting period for which the committee was required to file a report.

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

(c) A report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 apply shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the campaign treasurer may choose a threshold reporting amount for political contributions [~~of~~] specified in Tex. Elec. Code §254.1541(b)(1), as amended by Figure 1 in 1 TAC §18.31 [~~\$200~~] instead of the threshold reporting amount [~~of~~] specified in Tex. Elec. Code §254.031(a)(1) and (1-a), as amended by Figure 1 in 1 TAC §18.31 [~~\$100~~] set out in §20.433(11) and (25)(B) of this title.

(d) A monthly report by a campaign treasurer of a general-purpose committee to which this section and Election Code §254.1541 apply shall include the information required by §20.433 of this title, except that the campaign treasurer may choose a threshold reporting amount for political contributions of the amount specified in Tex. Elec. Code §254.156(2), as amended by Figure 1 in 1 TAC §18.31, [~~\$40~~] instead of the threshold reporting amount [~~of \$20~~] set out in §20.433(11) and (25)(B) of this title.

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

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

(1) makes direct campaign expenditures supporting or opposing a single candidate or a group of candidates that in the aggregate exceed the amounts specified in Tex. Elec. Code §254.039(a)(2), as amended by Figure 1 in 1 TAC §18.31 [§2,020 or a group of candidates that in the aggregate exceed \$30,330] during the reporting period for special pre-election reports; or

(2) accepts political contributions from a person that in the aggregate exceed the amount specified in Tex. Elec. Code §254.039(a)(1), as amended by Figure 1 in 1 TAC §18.31 [§6,940] during the reporting period for special pre-election reports.

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

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

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

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

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

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James Tinley

General Counsel

Texas Ethics Commission

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



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

### 1 TAC §20.553, §20.555

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

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

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

(a) A county executive committee accepting political contributions or making political expenditures totaling the amount specified

in Tex. Elec. Code §253.031(d), as amended by Figure 1 in 1 TAC §18.31 [§36,630] or less in a calendar year is not required to:

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

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

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

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

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

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed the amount specified in Tex. Elec. Code §253.031(d)(1), as amended by Figure 1 in 1 TAC §18.31 [§36,630] in a calendar year shall file:

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

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

(c) Contributions accepted from corporations and labor organizations under section 253.104 of the Election Code and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the amount specified in Tex. Elec. Code §253.031(d)(1), as amended by Figure 1 in 1 TAC §18.31 [§36,630] thresholds described in subsection (b) of this section.

(d) A county executive committee that filed a campaign treasurer appointment may file a final report, which will notify the commission that the county executive committee does not intend to file future reports unless it exceeds one of the amount specified in Tex. Elec. Code §253.031(d)(1), as amended by Figure 1 in 1 TAC §18.31 [§36,630] thresholds. The final report may be filed:

(1) beginning on January 1 and by the January 15 filing deadline if the committee has exceeded one of the amount specified in Tex. Elec. Code §253.031(d)(1), as amended by Figure 1 in 1 TAC §18.31 [§36,630] thresholds in the previous calendar year; or

(2) at any time if the committee has not exceeded one of the amount specified in Tex. Elec. Code §253.031(d)(1), as amended by Figure 1 in 1 TAC §18.31 [§36,630] thresholds in the calendar year.

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

Filed with the Office of the Secretary of State on July 28, 2023.

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## CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

### 1 TAC §§22.1, 22.6, 22.7

The Texas Ethics Commission proposes an amendment to Texas Ethics Commission rules in Chapter 22. Specifically, the Commission proposes amendments to §22.1, regarding Certain Campaign Treasurer Appointments Required before Political Activity Begins, §22.6, regarding Reporting Direct Campaign Expenditures, and §22.7, regarding Contribution from Out-of-State Committee.

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2024, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in 1 TAC §18.31 are also duplicated in 27 different rules, some of which are referenced above; this includes changes to 117 different thresholds. Rather than amending 117 different thresholds annually, the Ethics Commission is proposing to strike the dollar amount in the 27 affected rules. Instead, the rule will simply reference the chart in §18.31. Replacing a dollar amount with a reference to the chart will allow the Commission to amend only the chart in future years, will increase clarity to the public and provide notice that each reporting threshold is subject to annual adjustment. Amendments to the affected rules are included with the amendments to Figures 1 through 5 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

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

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

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

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

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

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

(b) A political committee may not accept political contributions exceeding the amount specified for making political contributions or making or authorizing political expenditures in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [~~\$980 and may not make or authorize political expenditures exceeding \$980~~] without filing a campaign treasurer appointment with the appropriate filing authority.

(c) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a political committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding the amount specified in Tex. Elec. Code §253.031(b), as amended by Figure 1 in 1 TAC §18.31 [~~\$980~~] to support or oppose a candidate in a primary or general election for the following:

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

county.

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

§22.6. *Reporting Direct Campaign Expenditures.*

Section 254.261 of the Election Code applies to a person who, not acting in concert with another person, makes one or more direct campaign expenditures that exceed the amount specified in Tex. Elec. Code §254.261(a), as amended by Figure 1 in 1 TAC §18.31 [§150] in an election from the person's own property.

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

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than the amount specified in Tex. Elec. Code §253.032(a), as amended by Figure 1 in 1 TAC §18.31 [§1,010], the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed the amount specified in Tex. Elec. Code §253.032(a), as amended by Figure 1 in 1 TAC §18.31 [§1,010] during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than the amount specified in Tex. Elec. Code §253.032(a)(1), as amended by Figure 1 in 1 TAC §18.31 [§1,010] to the out-of-state political committee during the 12 months immediately preceding the date of the contribution; or

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

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed the amount specified in Tex. Elec. Code §253.032(e), as amended by Figure 1 in 1 TAC §18.31 [§1,010].

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

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

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

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling the amount specified in Tex. Elec. Code §253.032(e), as amended by Figure 1 in 1 TAC §18.31 [§1,010] or less from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

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

(2) the following information:

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

(B) the address of the committee;

(C) the telephone number of the committee;

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

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

(i) the individual's full name;

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

(iii) the individual's telephone number.

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

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

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James Tinley

General Counsel

Texas Ethics Commission

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## CHAPTER 34. REGULATION OF LOBBYISTS SUBCHAPTER B. REGISTRATION REQUIRED

### 1 TAC §34.41, §34.43

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

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

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments, if adopted, will be effective on January 1, 2024, to apply to contributions and expenditures that occur on or after that date. The thresholds contained in 1 TAC §18.31 are also duplicated in 27 different rules, some of which are referenced above; this includes changes to 117 different thresholds. Rather than amending 117 different thresholds annually, the Ethics Commission is proposing to strike the dollar amount in the 27 affected rules. Instead, the rule will simply reference the chart in Section 18.31. Replacing a dollar amount with a reference to the chart will allow the Commission to amend only the chart in future years, will increase clarity to the public and provide notice that each reporting threshold is subject to annual adjustment. Amendments to the affected rules are included with the amendments to Figures 1 through 5 of 1 TAC §18.31, which has been submitted concurrently with this proposal.

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

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

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

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

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

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

§34.41. *Expenditure Threshold.*

(a) A person must register as a lobbyist under chapter 305 of the Texas Government Code [under Government Code, §305.003(a)(1),] if the person makes total expenditures of more than the amount specified in Tex. Gov't Code §305.003(a)(1), as amended by Figure 2 in 1 TAC §18.31 [§880] in a calendar quarter, not including expenditures for the person's own travel, food, lodging, or membership dues, on activities described in Government Code §305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

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

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

§34.43. *Compensation and Reimbursement Threshold.*

(a) A person must register as a lobbyist under chapter 305 of the Texas Government Code [under Government Code, §305.003(a)(2),] if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, more than the amount specified in Tex. Gov't Code §305.003(a)(2), as amended by Figure 2 in 1 TAC §18.31 [§1,760] in a calendar quarter in compensation and reimbursement, not including reimbursement for the person's own travel, food, lodging, or membership dues, from one or more other persons to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

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

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

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

Filed with the Office of the Secretary of State on July 28, 2023.

TRD-202302687

James Tinley

General Counsel

Texas Ethics Commission

Earliest possible date of adoption: September 10, 2023

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



## PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

## CHAPTER 254. REGIONAL POISON CONTROL CENTERS

### 1 TAC §254.2

The Commission on State Emergency Communications (CSEC) proposes amendments to §254.2, concerning CSEC's Poison Control Coordinating Committee.

#### BACKGROUND AND PURPOSE

CSEC proposes amendments to rule §254.2 (Title 1, Part 12, Chapter 254 of the Texas Administrative Code) relating to its Poison Control Coordinating Committee (PCCC). Health and Safety Code §777.008(a) directs CSEC to establish the PCCC to "coordinate the activities of the regional poison control centers designated under Section 777.001(a) and advise CSEC." Section 254.2 establishes and governs the PCCC in accordance with Government Code Chapter 2110, *State Agency Advisory Committees*. The PCCC is abolished by §254.2 on September 1, 2023, if that date is not revised. The primary purpose of amending §254.2 is to extend the duration of the PCCC.

As required by the rule and statute, CSEC has completed its review of the PCCC's work, usefulness, and costs and determined that it is in CSEC's best interests to continue the PCCC.

#### SECTION-BY-SECTION EXPLANATION

Section 254.2(o) is amended to extend the duration of the PCC by replacing the current year the PCCC is abolished (2023) with a new abolishment year (2029); and to replace the reference text "that date" with calendar text "September 1, 2029."

#### FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §254.2 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

#### PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to continue, in an official capacity, the advisory and coordinating functions of the PCCC for an additional six years; and further integrate the PCCC's activities into CSEC's statewide Poison Control Program consistent with the CSEC-approved PCCC bylaws. Costs of complying with the rule are borne by CSEC directly through staff time spent supporting the PCCC's activities and indirectly through grants to each Regional Poison Control Center comprising the PCCC; and by PCCC members volunteering their time.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost im-

posed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section §2001.0045(b) applies to the proposed amended rule and no exceptions are applicable. The proposed amended rule does not include a fiscal note imposing or increasing costs on regulated persons, including another state agency, a special district, or a local government. Accordingly, no repeal or amendment of another rule to offset costs is required.

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

#### REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

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

#### SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), CSEC has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affects only the relationship between CSEC and the Regional Poison Control Centers vis-à-vis CSEC's PCCC. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 1801 Congress Avenue, Suite 11.100, Austin, Texas 78701, by facsimile to (512) 305-6937, or by email to [patrick.tyler@csec.texas.gov](mailto:patrick.tyler@csec.texas.gov). Please include "254.2 Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATEMENT OF AUTHORITY

The amended section is authorized under Health and Safety Code §777.008 and Government Code Chapter 2110. The former establishes the PCCC and the latter requires state agencies to describe by rule an advisory committee's purpose and tasks,

the manner in which the PCCC reports to CSEC, and the duration of the PCCC.

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

§254.2. *Poison Control Coordinating Committee.*

(a) Purpose. Establish the Poison Control Coordinating Committee (Committee) created by Health and Safety Code §777.008. The Committee shall coordinate the activities of the regional poison control centers (RPCCs) and advise the Commission on State Emergency Communications (Commission) on:

(1) promoting public safety and injury prevention through well-coordinated poison control activities within the state of Texas;

(2) providing information and educational programs for communities and health care professionals;

(3) providing poison prevention education to the public, and informing and educating health professionals on the management of poison and overdose victims;

(4) providing technical assistance to state agencies requesting toxicology assistance; and

(5) providing consultation services concerning medical toxicology.

(b) Tasks. The Committee is tasked with:

(1) advising the Commission on rules relating to the poison control program;

(2) advising the Commission regarding the requirements of Health and Safety Code, Chapter 777, Regional Poison Control Centers;

(3) advising the Commission on the guidelines for an RPCC to achieve and maintain accreditation through the American Association of Poison Control Centers (AAPCC);

(4) coordinating with Commission staff the poison control program's input into the Commission's Strategic Plan and Legislative Appropriations Request; and

(5) coordinating, partnering, and evaluating in accordance with the Commission's adopted Committee bylaws.

(c) Composition. The Committee is composed of:

(1) one public member appointed by the Commission;

(2) six members who represent the six RPCCs, one member each appointed by the chief executive officer of each RPCC or the functional equivalent;

(3) one member appointed by the commissioner of the Department of State Health Services (DSHS); and

(4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission.

(d) Bylaws. The Committee shall draft bylaws for approval by the Commission.

(e) Terms of Office. Each member shall be appointed for a term of six years.

(1) Member terms begin on September 1 of the year of appointment.

(2) Members shall continue to serve after the expiration of their term until a replacement member is appointed.

(3) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that member's term.

(4) Members serve staggered terms, with the terms of one-third of the members expiring August 31 of each odd-numbered year. To implement staggered terms, the initial terms of each member were [are] as follows:

(A) public member and two RPCC members--2011;

(B) DSHS member and two RPCC members--2013;

and

(C) Commission member and two RPCC members--2015.

(f) Committee Meeting Attendance. Members shall attend scheduled Committee meetings.

(1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.

(2) It is grounds for removal, including by the Commission, if a member cannot discharge the member's duties for a substantial part of the member's appointed term because of illness or disability, is absent from more than half of the Committee meetings during a fiscal year, or is absent from at least three consecutive Committee meetings. The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Statement by Members.

(1) The Commission and the Committee shall not be bound in any way by any statement or action on the part of any Committee member except when a statement or action is in pursuit of specific instructions from the Commission or Committee.

(2) The Committee and its members may not participate in legislative activity in the name of the Commission or the Committee except with approval through the Commission's legislative process. Committee members are not prohibited from representing themselves, their RPCC, or other entities in the legislative process.

(h) Reimbursement for Expenses. In accordance with the requirements set forth in Government Code, Chapter 2110, a Committee member may only receive reimbursement for the member's expenses, including travel expenses, incurred for each day the member engages in official Committee business from appropriated funds if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to Committee members unless required by law.

(2) A Committee member who is an employee of a state agency, other than the Commission or DSHS, may not receive reimbursement for expenses from the Commission.

(3) A nonmember of the Committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from appropriated funds unless authorized in accordance with subsection (h) of this section and approved by the Commission's Executive Director.

(4) Each member who is to be reimbursed for expenses shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after each Committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by Commission staff.

(i) Reporting to the Commission. The Committee shall submit written reports to the Commission in accordance with Committee bylaws; and additionally as follows:

(1) by September 1 of each year submit an annual report to the Commission that includes, but is not limited to, the following:

(A) an update on the Committee's work, including:

- (i) Committee meeting dates;
- (ii) member attendance records;
- (iii) description of actions taken by the Committee;
- (iv) description of how the Committee has accomplished or addressed the tasks and issues assigned to the Committee by the Commission;

(v) information on available grants and any grant funding received by the RPCCs; and

(vi) anticipated future activities of the Committee;

(B) description of the usefulness of the Committee's work; and

(C) statement of costs related to the Committee, including the cost of Commission staff time spent in support of the Committee;

(2) by June 1 in even-numbered years, a report advising and making recommendations regarding development of the Commission's biennial Strategic Plan and Legislative Appropriations Request; and

(3) by June 1 in odd-numbered years, a report on the distribution of appropriated funding, the implementation of legislative requirements, and other information as may be determined by the Commission.

(j) Commission Staff. Support for the Committee shall be provided by Commission staff.

(k) Advisory Committee. The Committee is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Texas Government Code, Chapter 551).

(l) Applicable law. The Committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(m) Commission Evaluation. The Commission shall annually evaluate the Committee's work, usefulness, and the costs related to the Committee, including the cost of Commission staff time spent supporting the Committee's activities.

(n) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (m) of this section on a biennial basis as part of the Commission's Legislative Appropriations Request.

(o) Review and Duration. Before September 1, 2029 [2023], the Commission will initiate and complete a review of the Committee to determine whether the Committee should be continued or abolished. If the Committee is not continued, it shall be automatically abolished on September 1, 2029 [that date].

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 July 27, 2023.

TRD-202302672

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: September 10, 2023

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



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 10. UNIFORM MULTIFAMILY RULES

##### SUBCHAPTER G. AFFIRMATIVE MARKETING REQUIREMENTS AND WRITTEN POLICIES AND PROCEDURE

###### 10 TAC §§10.800 - 10.803

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures. The purpose of the proposed repeal is to remove outdated language while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held August 11, 2023 to September 11, 2023, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [elizabeth.yevich@tdhca.state.tx.us](mailto:elizabeth.yevich@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time September 11, 2023.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§10.800. *Definitions.*

§10.801. *Affirmative Marketing Requirements.*

§10.802. *Written Policies and Procedures.*

§10.803. *Compliance and Events of Noncompliance.*

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 July 28, 2023.

TRD-202302694

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 10, 2023

For further information, please call: (512) 475-3959

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**10 TAC §§10.800 - 10.803**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures. The purpose of the proposed new section is to bring the rule up to date by including the new HOME-ARP program and clarifying and correcting language.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern accessibility and reasonable accommodations.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, there will be no economic effect on small or micro-businesses or rural communities.

c. **TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. **LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. **PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).** Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. **FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).** Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

**REQUEST FOR PUBLIC COMMENT.** The Department will accept public comment from August 11, 2023 to September 11, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Housing Resource Center, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [elizabeth.yevich@tdhca.state.tx.us](mailto:elizabeth.yevich@tdhca.state.tx.us). **ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local time, September 11, 2023.**

**STATUTORY AUTHORITY.** The rule action is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§10.800. Definitions.

The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 11 (relating to the Qualified Allocation Plan), Chapter 12 (relating to the Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to the Multifamily Direct Loan

Rule), or Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable.

§10.801. Affirmative Marketing Requirements.

(a) **Applicability.** Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) **General.** A Development Owner with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Although not related to Affirmative Marketing requirements in this section, some Developments may be required by their LURAs to market units specifically to veterans or other populations as part of their regular marketing activities. If a Development has included veterans in the Development's Affirmative Marketing Plan it will not be cited as noncompliance the first time the Development's Affirmative Marketing Plan is reviewed, but the Development will be directed to revise the Affirmative Marketing Plan to not include this subpopulation in the plan.

(c) **Plan format.** A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo;

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months prior to the anticipated date the first building is to be available for occupancy.

(2) Once every five years, Owners must determine if there have been any changes to the "least likely to apply" populations by completing Worksheet 1 of HUD Form 935.2A or a written process with equivalent information. In addition, owners must determine if current advertising sources still exist, and if the outreach that has been performed is still the most applicable. If the Owner determines that the plan does not need to be updated, the backup used to complete Worksheet 1 or its equivalent must be dated and maintained and may be reviewed by Department staff during reviews of the Affirmative Marketing Plan. If there have been changes to the least likely to apply populations or if the community contacts and advertising outlets no longer exist, the plan must be updated. Developments funded by HUD or USDA must also update their plans in accordance with HUD or USDA requirements that apply.

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to the building being ready for occupancy as required under subsection (e)(1) of this section.

*§10.802. Written Policies and Procedures.*

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such Written Policies and Procedures, or fails to follow their Written Policies and Procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these Written Policies and Procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are: an email or letter to all tenants, a note on all occupied Unit doors, or posting for at least 30 calendar days in a mailroom or other central common area, accessible to tenants. Other acceptable forms of notification may be approved by the Department upon request in advance of the policy's effective date.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to

meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibility criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has federal or state funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or \$2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, HOME ARP, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, HOME ARP, TCAP RF, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development Organizations, and for 811 PRA units).

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

§10.803. Compliance and Events of Noncompliance.

(a) The Department will provide written notice to the Owner if the Department discovers through monitoring, review, resident complaint, or any other manner that the Development is not in compliance with the provisions of this subchapter. A 90 day Corrective Action Period will be provided. Documentation of correction must be received during the Corrective Action Period for an Event of Noncompliance to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original 90 day Corrective Action Period, and the

request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: fair.housing@tdhca.state.tx.us.

(b) If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each issue, but does not fully address all issues, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action.

(c) If communications to the Owner under this subchapter have a pattern of being returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) for notifications under this subchapter. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Events of Noncompliance identified in the evaluation of the requirements of this subchapter will be those specified in §10.625 of this title (relating to Events of Noncompliance).

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 July 28, 2023.

TRD-202302695

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: September 10, 2023

For further information, please call: (512) 475-3959



## CHAPTER 23. SINGLE FAMILY HOME PROGRAM

### SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

#### 10 TAC §23.27

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC Chapter 23,

§23.27. The rule amendments update the authority to grant amendments to Household Commitment Contracts and outline with more specificity the types of amendments that may be granted by the Executive Director's designee. The amendments also increase the term of extension that may be granted by the Executive Director's designee from three months to six months.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The proposed amendment to the rule will not create or eliminate a government program;
2. The proposed amendment to the rule will not require a change in the number of employees of the Department;
3. The proposed amendment to the rule will not require additional future legislative appropriations;
4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed amendment to the rule will not create a new regulation;
6. The proposed amendment to the rule will not repeal an existing regulation;
7. The proposed amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be conformance to statutory requirements. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from August 11, 2023, to September 11, 2023. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Single Family and Homeless Programs, P.O. Box 13941, Austin, Texas 78711-3941, or email HOME@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Central Daylight Time, September 11, 2023.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§23.27. *Reservation System Participant (RSP) Agreement.*

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity, unless amended in accordance with subsection (g) of this Section.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the Household commitment contract term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than six [three] months, except that the term of a Household commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total Household commitment contract term of 24 months.

(2) The Executive Director's authorized designee may approve one or more [an] amendment to a Household commitment contract to: [ ]

(A) extend the Construction Completion Date by not more than six months;

(B) extend the term of rental subsidy up to a total term of 24 months;

(C) extend the draw period by not more than three months after the Construction Completion Date or termination of rental subsidy; or

(D) increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

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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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3959



## TITLE 13. CULTURAL RESOURCES

### PART 2. TEXAS HISTORICAL COMMISSION

#### CHAPTER 12. TEXAS HISTORIC COURTHOUSE PRESERVATION PROGRAM

##### 13 TAC §§12.5, 12.7, 12.9

The Texas Historical Commission (Commission) proposes amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 12, §§12.5, 12.7, and 12.9 related to the Texas Historic Courthouse Preservation Program.

Section 12.5 is revised to provide a clearer definition of "courthouse" and "historic courthouse" to align with the intention of the enabling statute that grants fund the preservation of buildings that serve or have served as the county courthouse. The definition of "historic courthouse structure" is eliminated to avoid redundancy with other definitions, and program eligibility requirements are consolidated in §12.7(a). Definitions of "full restoration" and "restoration period" are added to clarify the parameters for associated grants.

Section 12.7(d) is revised in consideration of Texas Government Code §442.0081(d)(2), which indicates that the commission will give preference to applicants providing at least 15% of the project cost but does not disallow a smaller match. The updated language allows the commission, at its sole discretion, to waive or modify the match requirements in this section.

Section 12.7(e)(3) is revised to reflect a change in the program cap from \$6 million to \$10 million, based on recent legislation that will go into effect on September 1, 2023 (Tex. S.B. 1332, 88 Leg., R.S. (2023), to be codified at Texas Government Code §442.0083(e)). Section 12.7(j) is revised to change a program requirement to a recommendation regarding future grant applications. Section 12.7(k) is added to address construction quality issues with completed projects and requires repayment of grants

for repairs to poor-quality construction if funds are later recovered through litigation or other remedies.

Section 12.9 is revised to correct grammatical and citation errors, and §12.9(c)(23) is added to create a scoring category in consideration for counties continuing to apply for funding.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

PUBLIC BENEFIT. Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. Accordingly, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code § 2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT. Because the proposed amendments only concern clarifications to an existing program, during the first five years that the amendments would be in effect, the proposed amendments: 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 not create a new regulation; will not repeal an existing 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 amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that 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 and, therefore, does not constitute a taking under Texas Government Code, § 2007.043.

PUBLIC COMMENT. Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code § 442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission, and Texas Government Code § 442.0081(h), which authorizes the Commission to adopt rules necessary to implement the Texas Historic Courthouse Preservation Program.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles, or codes are affected by these amendments.

§12.5. *Definitions.*

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise:

(1) Texas Historic Courthouse Preservation Program. Means the grant or loan program created by Texas Government Code §§442.0081 - 442.0083.

(2) The Courthouse Fund Account. Means a separate account in the general revenue fund. The account consists of transfers made to account, payment on loans made under the historic courthouse preservation program, grants and donations received for the purposes of the historic courthouse preservation program, and income earned on investments of money in the account.

(3) Texas Courthouse Preservation Program Advisory Committee. Means a committee that serves the commission in matters concerning the courthouse program.

(4) Courthouse. Means the principal buildings ~~[building(s)]~~ which serve as the primary seat of ~~[houses]~~ county government of the county in which it is located, ~~[offices and courts]~~ and its ~~[(their)]~~ surrounding sites ~~[site(s)]~~ (typically the courthouse square). The courthouse includes additions or annexes physically attached to the building that were constructed for the purpose of expanding the functions of the courthouse, but it does not include other freestanding buildings on the site.

(5) Historic courthouse. Means a ~~[county courthouse or]~~ building that currently or previously served as a county courthouse, as defined in paragraph (4) of this section, and which entered service as a courthouse ~~[that is]~~ at least 50 years ~~[old]~~ prior to the due date of the grant application, ~~[with the initial date of service defined as the date of]~~ using the first ~~[official]~~ commissioners court meeting as its first date of service ~~[in the building]~~. A historic courthouse may include additions or annexes physically attached to the courthouse for at least 50 years prior to the due date of the grant application.

(6) Historic courthouse project. Means an undertaking to preserve or restore a historic courthouse.

~~[(7) Historic courthouse structure. Means a courthouse structure that is a structure that currently or previously served as the official county courthouse of the county in which it is located; and that is:]~~

~~[(A) at least 50 years old prior to the date of application, with the initial date of service defined as the date of the first official commissioners court meeting in the building;]~~

~~[(B) listed on the National Register of Historic Places;]~~

~~[(C) designated a Recorded Texas Historic Landmark;]~~

~~[(D) designated a State Antiquities Landmark;]~~

~~[(E) determined by the commission to qualify as an eligible property under the designations noted above;]~~

~~[(F) certified by the commission to the other state agencies as worthy of preservation; or]~~

~~[(G) designated by an ordinance of a municipality with a population of more than 1.5 million as historic.]~~

(7) [(8)] Master preservation plan or master plan. Means a comprehensive planning document that includes the historical background of a courthouse, as well as a detailed analysis of its architectural integrity, current condition, and future needs for preservation. The commission shall promulgate specific guidelines for developing the document.

(8) [(9)] Conservation Easement. Means a voluntary legal agreement whereby the property owner grants the Commission an interest in the property for the purpose of preservation of historic, architectural, scenic and open space values, also may be called a preservation easement.

(9) [(10)] Construction Documents (also known as contract documents). Means the written and graphic instructions used for construction of a project which are prepared by an architect and their engineering consultants. May also be called architectural plans and specifications.

(10) [(11)] Restoration. Means the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restored period. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(11) [(12)] Reconstruction. Means the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(12) [(13)] Preservation. Means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(13) [(14)] Rehabilitation. Means the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values. (As defined by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised)).

(14) Full restoration. Means a construction grant to undertake a project to restore a courthouse to its appearance at an agreed upon restoration period, which includes removing additions and alterations from later periods and reconstructing features missing from the restoration period. This treatment applies to the site, exterior of the courthouse, and interior public spaces such as the corridors, stairways, and courtrooms. Secondary spaces may be preserved or rehabilitated rather than restored. Additions or attached annexes must be removed if they post-date the selected restoration period. Retention or removal of site features from outside of the restoration period may be evaluated on a case-by-case basis.

(15) Restoration period. Means the date selected for the purpose of defining the full restoration of a courthouse, representing the most significant time in the courthouse's history. Selection of the restoration period must be justified based on documentary and physical evidence and surviving integrity of historic materials from that period, and it must be described in the master plan for the restoration project. The restoration period represents a time when the building in its entirety exhibited a cohesive architectural style exemplifying the work of an architect or a period when the building experienced a significant historical event.

(16) [(15)] Match requirement. Means the percentage of the total project cost that must be provided by a county or municipality.

(17) [(46)] Current cash match. Means monies to be paid by a county or municipality as part of the preservation project described in a current request for grant or loan funding.

(18) [(47)] Current in-kind match. Materials and labor to be donated as part of the preservation project described in a current request for grant or loan funding.

(19) [(48)] Planning match. Means county or [of] municipal monies spent on an approved master preservation plan or approved construction plans and specifications.

§12.7. *Grant or Loan Program.*

(a) Property Eligibility. In order to be eligible for grants or loans under the courthouse program, a historic courthouse owned by either a county or municipality must be: ~~[determined a historic courthouse structure as defined in §12.5 of this chapter.]~~

(1) listed in the National Register of Historic Places;

(2) designated a Recorded Texas Historic Landmark;

(3) designated a State Antiquities Landmark;

(4) determined by the commission to qualify as an eligible property under the designations noted above;

(5) certified by the commission as worthy of preservation;

or,

(6) designated by an ordinance of a municipality with a population of more than 1.5 million as historic.

(b) Master plan requirement. In order to be eligible for funding, a county or municipality must have completed a current master preservation plan approved by the commission. The commission may require an outdated master plan be updated prior to the date of application or a before a grant or loan is approved.

(c) Types of Assistance. The commission may provide financial assistance in the form of grants or loans. Grant or loan recipients shall be required to follow the terms and conditions of the Texas Historic Courthouse Preservation Program and other terms and conditions imposed by the commission at the time of the grant award or loan.

(d) Match for grant or loan assistance. Applicants eligible to receive grant or loan assistance should [must] provide a minimum of 15% of the total project cost or other match requirements as determined by the commission. Credit toward the match may be given for a county's or municipality's prior capital and in-kind contributions and prior master planning costs ~~[-], with not [Not]~~ less than one half of the match [must be] derived from current cash match and/or planning match. In exceptional circumstances, the commission may, at its sole discretion, waive the match requirements and/or approve a larger credit toward prior expenditures.

(e) Allowable use of grant or loan monies.

(1) A county or municipality that receives money under the courthouse program must use the money only for preservation, reconstruction, rehabilitation, restoration or other expenses that the commission determines eligible.

(2) All work must comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (1995 edition, or as revised).

(3) Individual grants or loans may not exceed \$10 (ten) ~~[\$6 (six)]~~ million and the cumulative total may not exceed \$10 (ten) ~~[\$6]~~ million to any one county or municipality.

(4) The commission may grant a different amount than requested in a courthouse grant application.

(f) Administration. The courthouse program shall be administered by the commission.

(g) Advisory Committee.

(1) The commission may appoint Advisory Committees or other working groups to advise the commission on matters related to the Texas Historic Courthouse Preservation Program including courthouse maintenance.

(2) The commission should consider the following when selecting members of an advisory committee or working group:

(A) geographic diversity;

(B) population;

(C) area of expertise; and/or

(D) representation of the public interest.

(h) Procedures. The commission shall adopt procedures, and revise them as necessary, to implement the Texas Historic Courthouse Preservation Program.

(i) Compliance with current program grant manual and all other rules, statutes, policies, procedures and directives is mandatory for all historic courthouse projects unless written exception is provided by the commission due to unforeseen circumstances beyond the control of grantee or grantor.

(j) Grants for Construction Plans and Specifications:

(1) The commission may make grants for the purpose of completing construction plans and specifications for courthouse construction projects.

(2) A county or municipality receiving a grant for completing plans and specifications is encouraged to [must] apply for a construction grant from this program at the next grant program funding opportunity following commission acceptance of the complete plans and specifications. In the subsequent grant application, the county or municipality should [must] provide at least an equal level of commitment to program components as provided in their previous funding applications. ~~[If a construction grant is awarded, the county or municipality must go forward with construction of the courthouse project so funded. If a grant is not awarded, the county or municipality must continue to apply for construction grants and make a good-faith effort to receive the grant when subsequent opportunities arise.]~~

~~[(3) A county or municipality that does not apply for a construction grant in accordance with this section at each grant funding opportunity during the following six years or does not complete the courthouse project by other means within these six years following the commission's acceptance of the plans and specifications will be required to repay the grant for plans and specifications to the commission unless the commission votes to allow additional time to accomplish the construction project.]~~

~~[(4) A county or municipality that continues to apply for construction grants and makes a good-faith effort to receive the award and does not receive a grant or is able to complete the construction project by other good faith efforts will not be required to repay the grant.]~~

(k) Grants for Construction Defects:

(1) The commission may make grants for the purpose of remedying defects in construction quality from a previous grant-funded project. Before applying for such a grant, a county or municipality must first pursue repairs under warranty or administrative remedies with their contractor, architect, or other party at fault for the defect.

(2) If a county or municipality that receives a grant to remedy a construction defect later recovers funds related to the scope of the grant through litigation or a settlement agreement, the net amount recovered, minus court costs and attorney's fees, shall be ineligible for grant reimbursement. The commission may recapture the grant, or if the net amount recovered is insufficient to accomplish the full scope of work for the grant, the commission may revise the grant budget to consider such funds as the cash match and recapture the excess amount of the grant award. Further, the county or municipality must repay any such funds that were previously reimbursed, proportionate to the state share of the overall project costs.

*§12.9. Application Requirements and Considerations.*

(a) A county or municipality that owns a historic courthouse may apply to the commission for a grant or loan for a historic courthouse project. The application must include:

- (1) the address of the courthouse;
- (2) a statement of the historic designations that the courthouse has or is likely to receive;
- (3) a statement of the amount of money that the county or municipality commits to contribute to the project;
- (4) a statement of previous county or municipal monies spent on planning which the county or municipality may be allowed as credit toward their match;
- (5) a statement of whether the courthouse is currently functioning as a courthouse or other public facility;
- (6) copies of any plans, including the required master preservation plan or construction plans and specifications, that the county or municipality may have for the project unless the commission already has these plans on file;
- (7) copies of existing deed covenants, restrictions or easements held by the commission or other preservation organizations;
- (8) statements of support from local officials and community leaders; ~~and~~
- (9) the current cost estimate of the proposed project; and
- (10) any other information that the commission may require.

(b) The Texas Historic Courthouse Preservation Program will be a competitive process, with applications evaluated and grants awarded based on the factors provided in this section, including the amount of program money for grants.

- (1) Funding requests may be reduced by the commission to reflect ineligible project costs or smaller scopes or phases of work such as planning for the construction work.
- (2) The commission may adjust the amount of a previously awarded grant up and/or down based on the changing conditions of the property and the program.

(c) In considering whether to grant an application, the commission will assign weights to and consider each of the following factors:

- (1) the status of the building as a functioning courthouse;
- (2) the age of the courthouse;
- (3) the degree of endangerment;
- (4) whether the courthouse is subject to a current conservation easement or covenant held by the commission;

(5) whether the proposal is in conformance with the approved master plan and addresses the current condition and needs of the property in proper sequence;

(6) whether the county or municipality agrees to place/extend a preservation easement/covenant and/or deed restriction as part of the grant process;

(7) the importance of the building within the context of an architectural style;

(8) whether the proposal addresses and remedies former inappropriate changes;

(9) the historic significance of the courthouse, as defined by 36 CFR §60.4 [§101(a)(2)(A) and (E)], and National Park Service [NPS] Bulletin 15, "How to Apply the National Register Criteria for Evaluation;"

(10) the degree of surviving integrity of original design and materials;

(11) if a county or municipality submits completed and commission-approved construction plans and specifications for proposed work at the time of the application, provided the plans and specifications comply with the previously approved master plan;

(12) the use of the building as a courthouse after the project;

(13) the county's or municipality's provision of a match greater than 15% of the grant request;

(14) the degree to which the proposal achieves a fully restored county courthouse;

(15) the status of the courthouse in terms of state and local historical designations that are in place;

(16) the county or municipal government's provision of preservation incentives and support of the county historical commission and other county-wide preservation efforts;

(17) the location of the county in a region with few awarded courthouse grant applications;

(18) the existence of a plan for physically protecting county records during the restoration and afterwards, as well as an assessment of current and future space needs and public accessibility for such records, if county-owned;

(19) the existence of a strong history of compliance with the state courthouse law (Texas Government Code, §[§]442.008[+ - 442.0083] and the Antiquities Code of Texas, Texas Natural Resources Code Chapter 191);

(20) the effort to protect and enhance surrounding historic resources;

(21) the evidence of community support and county or municipality commitment to protection; ~~and~~

(22) the applicant's local funding capacity as measured by the total taxable value of properties in the jurisdiction; ~~and~~[-]

(23) the number of prior cycles in which a county has applied for and not received a full restoration grant.

(d) Other Considerations.

(1) The factors noted in subsection (c) of this section, and any additional ones determined necessary by the commission, will be published prior to each individual grant round as part of the formal procedures for the round.

(2) The commission may distribute a portion of the funds available for each grant period to be used for specific purposes on an expedited basis and/or granted through different criteria than other funds. Such specific purposes may include, but are not limited to, the following:

(A) Emergency repairs necessary to address or prevent catastrophic damage to the courthouse; or

(B) Compliance with the Americans with Disabilities Act or other state or federally mandated repairs or modifications; or

(C) Previously awarded projects that require additional funding to accomplish the intended goals of the project; or

(D) Updates to approved courthouse preservation master plans.

(3) Any such distribution to a specific purpose or change in criteria must be decided by a vote of the commission and advertised to the potential grantees prior to the date for the submission of applications.

(e) As a condition for a county or municipality to receive money under the courthouse fund, the commission may require creation of a conservation easement on the property, and may require creation of other appropriate covenants in favor of the state. The highest preference will be given to counties agreeing to the above referenced easements or covenants at the time of application.

(f) The commission shall provide oversight of historic courthouse projects.

(1) The commission may make periodic inspections of the projects during construction and/or upon and following completion to ensure compliance with program rules and procedures.

(2) The commission may require periodic reports to ensure compliance with program rules and procedures and as a prerequisite to disbursement of grant or loan funds.

(3) The commission may adopt additional procedures to ensure program compliance.

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 July 28, 2023.

TRD-202302699

Mark Wolfe

Executive Director

Texas Historical Commission

Earliest possible date of adoption: September 10, 2023

For further information, please call: (512) 463-6100



## CHAPTER 13. TEXAS HISTORIC PRESERVATION TAX CREDIT PROGRAM

### 13 TAC §§13.1 - 13.3

The Texas Historical Commission (Commission) proposes amendments to the Texas Administrative Code, Title 13, Part 2, Chapter 13, Sections 13.1, 13.2, and 13.3, related to the Texas Historic Preservation Tax Credit Program. The amendments are to Texas Tax Code citations.

Legislation for the Texas Historic Preservation Tax Credit Program has resided in Subchapter S of Chapter 171 of the code, which defines the state's franchise tax. Legislation that goes into effect on September 1, 2023 will move Subchapter S from Chapter 171 into its own chapter, Chapter 172 (Tex. S.B. 1013, 88 Leg., R.S. (2023)). All language in the rules remains the same, except for seven references directly to Chapter 171 of the Texas Tax Code. These are now proposed to reference Chapter 172.

FISCAL NOTE. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rules.

PUBLIC BENEFIT. Mr. Wolfe has also determined that for the first five-year period the amended rule is in effect, the public benefit will be the preservation of and education about state historic resources.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. Mr. Wolfe has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing these rules. Accordingly, no regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to these rules, as proposed. There is no effect on local economy for the first five years that the proposed new section is in effect; therefore, no local employment impact statement is required under Texas Government Code § 2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT. Because the proposed amendments only concern clarifications to an existing program, during the first five years that the amendments would be in effect, the proposed amendments: 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 not create a new regulation; will not repeal an existing 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 amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. The Commission has determined that 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 and, therefore, does not constitute a taking under Texas Government Code, § 2007.043.

PUBLIC COMMENT. Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code § 442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission, and Texas Government Code § 172.110, of the Texas Tax Code, which authorizes the Commission to adopt rules necessary to

implement the Tax Credit for Certified Rehabilitation of Certified Historic Structures.

CROSS REFERENCE TO OTHER LAW. No other statutes, articles, or codes are affected by these amendments.

*§13.1. Definitions.*

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:

Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes, among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of Eligibility--A document issued by the Commission to the owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(66) and (67) of this title (relating to Recorded Texas Historic Landmark Designation and Definitions, respectively); or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 CFR §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit, it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certified rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 CFR Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 172 [~~171~~, ~~Subchapter S~~] of the Texas Tax Code.

(14) District--A geographically definable area, urban, or rural, possessing a significant concentration, linkage, or continuity of sites, building, structures, or objects united by past events geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 CFR §1.48-12(c), incurred during the project, except as otherwise specified in Chapter 172 [~~171~~, ~~Subchapter S~~] of the Texas Tax Code.

(16) Federal rehabilitation tax credit--A federal tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 CFR §1.48-12; and 36 CFR Part 67.

(17) Functionally related buildings--A collection of buildings that were constructed or used to serve and support an overall single purpose during their period of significance. Examples include but are not limited to: a residence and carriage house; a multi-building apartment complex; a multi-building industrial or commercial complex; or buildings constructed as a campus. Buildings within a typical neighborhood or downtown commercial historic district, among other property types, do not count as functionally related buildings with other buildings in the district, unless there is a certain historical attachment other than community development. Functionally related buildings owned by one entity are viewed as a single property while those owned by separate entities are viewed as separate properties.

(18) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(19) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, an institution of higher education or university system or any other entity holding a legal or equitable interest in a Property or Structure, which can include a full or

partial ownership interest. Not all of these owner entities can qualify as an applicant for the credit, based on the requirements listed in Chapter 172 [~~171~~, ~~Subchapter S~~] of the Texas Tax Code. A long-term lessee of a property may be considered an owner if their current lease term is at a minimum 27.5 years for residential rental property or 39 years for nonresidential real property, as referenced by §47(c)(2), Internal Revenue Code.

(20) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 CFR §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation, as long as each phase meets the definition of a Project. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(21) Placed in Service--A status obtained upon completion of the rehabilitation project as described in Part B of the application, and any subsequent amendments, and documented in Part C of the application. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion. Other documents will suffice when certificates of occupancy and/or substantial completion are not available for a specific project, including final contractor invoices or other verifiable statements of completion. Alternate documents should be approved by the Commission before submission. Placed in Service documentation must indicate the date that work was completed.

(22) Project--A specified scope of work, as described in a rehabilitation plan submitted with Part B of the application and subsequent amendments, comprised of work items that will be fully completed and Placed in Service. Examples of a project may include, but are not limited to, a whole building rehabilitation, rehabilitation of individual floors or spaces within a building, repair of building features, or replacement of building systems (such as mechanical, electrical, and plumbing systems). Partial or incomplete scopes of work, such as project planning and design, demolition, or partial completion of spaces, features, or building systems are not included in this definition as projects. Per §13.6(f) of this title (relating to Application Review Process), the Commission's review encompasses the entire building and site even if other work items are not included in a submitted project.

(23) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(24) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(25) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(26) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined by the National Park Service in 36 CFR §67.7.

(27) Structure--A building; see also certified historic structure. "Structure" may be used in place of the word "building," but all

tax credit projects must involve rehabilitation of a building as defined in §13.1(5) of this title.

(28) Tax Credit--A credit earned against either the state franchise tax or the insurance premium tax per Chapter 172 [~~171~~] of the Texas Tax Code and any limitations provided therein.

### §13.2. Qualification Requirements.

#### (a) Qualification for credit.

(1) An Owner is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

(A) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(B) the Owner has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(C) the total amount of the eligible costs and expenses incurred exceeds \$5,000.

(2) A property for which eligible costs and expenses are submitted for the credit must meet Internal Revenue Code §47(c)(2) which includes:

(A) non-residential real property;

(B) residential rental property; or

(C) other property types exempted from parts of Internal Revenue Code §47(c)(2) as described in Chapter 172 [~~171~~, ~~Subchapter S~~] of the Texas Tax Code.

(b) Eligible costs and expenses. Eligible costs and expenses means those costs and expenses allowed pursuant to Internal Revenue Code §47(c)(2) or as exempted by Chapter 172 [~~171~~, ~~Subchapter S~~] of the Texas Tax Code. Such eligible costs and expenses, include, but are not limited to:

(1) expenditures associated with structural components as defined by United States Treasury Regulation §1.48-1(e)(2) including walls, partitions, floors, ceilings, windows and doors, stairs, elevators, escalators, sprinkler systems, fire escapes, components of central air conditioning, heating, plumbing, and electrical systems, and other components related to the operation or maintenance of the building;

(2) architectural services;

(3) engineering services;

(4) construction management and labor, materials, and reasonable overhead;

(5) subcontracted services;

(6) development fees;

(7) construction period interest and taxes; and

(8) other items referenced in Internal Revenue Code §47(c)(2).

(c) Ineligible costs and expenses. Eligible costs and expenses as defined in Internal Revenue Code §47(c)(2) do not include the following:

(1) the cost of acquiring any interest in the property;

(2) the personal labor by the applicant;

(3) any cost associated with the enlargement of an existing building;

(4) site work expenditures, including any landscaping, sidewalks, paving, decks, outdoor lighting remote from the building, fencing, retaining walls or similar expenditures; or

(5) any cost associated with the rehabilitation of an outbuilding or ancillary structure unless it is certified by the Commission to contribute to the historical significance of the property.

(d) Eligibility date for costs and expenses.

(1) Part A of the Texas Historic Preservation Tax Credit Certification Application must be submitted prior to the building being placed in service per §13.1(21) of this title (relating to Definitions). Projects that have been placed in service prior to submission of Part A of the application do not qualify for the program.

(2) While the credit may be claimed for eligible costs and expenses incurred prior to the filing of an application, potential applicants are urged to file Parts A and B of the application at the earliest possible date. This will allow the Commission to review the application and provide guidance to the applicant that will increase the chances that the application will ultimately be approved and the credit received.

(e) Phased development. Part B applications for rehabilitation of the same certified historic structure may be submitted by the same owner only if they describe clearly defined phases of work that align with a cost report that separates the eligible costs and expenses by phase. Separate Part B and C applications shall be submitted for review by the Commission prior to issuance of a certificate of eligibility for each phase.

(f) Amount of credit. The total amount of credit available is twenty-five percent (25%) of the aggregate eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

### §13.3. Evaluation of Significance.

(a) Application Part A - Evaluation of Significance. Part A of the application requires information to allow the Commission to evaluate whether a building is a certified historic structure and shall be completed for all buildings to be included in the project. Part A of the application is evaluated against criteria for significance and integrity issued by the National Park Service.

(b) Application Requirements. Information to be submitted in Part A of the application includes:

(1) Name, mailing address, telephone number, and email address of the property owner(s) and Applicant if different from the Owner;

(2) Name and address of the property;

(3) Name of the historic district, if applicable;

(4) Current photographs of the building and its site, showing exterior and interior features and spaces adequate to document the property's significance. Photographs must be formatted as directed by the Commission in published program guidance materials on the Commission's online Texas Historic Preservation Tax Credit Application Guide available by accessing [thc.texas.gov](http://thc.texas.gov);

(5) Date of construction of the property;

(6) Brief description of the appearance of the property, including alterations, characteristic features, and estimated date or dates of construction and alterations;

(7) Brief statement of significance summarizing why a property is:

(A) eligible for individual listing in the National Register of Historic Places;

(B) contributes to a historic district listed in the National Register of Historic Places or a certified local district; or

(C) contributes to a potential historic district, accompanied by:

(i) a map showing the boundary of the potential historic district and the location of the property within the district;

(ii) photographs of other properties in the district; and

(iii) justification for the district's eligibility for listing in the National Register of Historic Places;

(8) A map showing the location of the historic property;

(9) Signature of the Owner, and Applicant if different from the Owner, requesting the determination; and

(10) Other information required on the application by the Commission.

(c) Consultation with Commission. Any person may informally consult with the Commission to determine whether a property is:

(1) listed individually in the National Register of Historic Places;

(2) designated as a Recorded Texas Historic Landmark or State Antiquities Landmark; or

(3) certified by the Commission as contributing to the historic significance of a historic district listed in the National Register of Historic Places or a certified local district.

(d) Automatic qualification as certified historic structure. If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, then it is a certified historic structure and should be indicated as such on Part A of the application.

(e) Preliminary determination of significance. An Applicant for a property not listed in the National Register of Historic Places, neither individually nor as a contributing element to a historic district; not designated a Recorded Texas Historic Landmark nor State Antiquities Landmark; and not listed in a certified local district may obtain a preliminary determination from the Commission as to whether the property is individually eligible to become a certified historic structure or is eligible as a contributing structure in a potential historic district by submitting Part A of the application. Determination will be based on criteria for listing in the National Register of Historic Places. Applications for a preliminary determination of significance must show how the property meets one of the following criteria for listing in the National Register of Historic Places and any applicable criteria considerations from the National Park Service.

(1) National Register of Historic Places criteria. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and one or more of subparagraphs (A) - (D) of this paragraph:

(A) Properties that are associated with events that have made a significant contribution to the broad patterns of our history; or

(B) that are associated with the lives of persons significant in our past; or

(C) that embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master,

or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(D) that have yielded, or may be likely to yield, information important in prehistory or history.

(2) Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(A) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

(B) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(C) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or

(D) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

(E) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

(F) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

(G) A property achieving significance within the past 50 years if it is of exceptional importance.

(3) Issuance of a preliminary determination of significance does not bind the Commission to the designation of an individual historic structure or district. Applicants proceed with rehabilitation projects at their own risk. If a structure is ultimately not listed in the National Register of Historic Places, designated as a Recorded Texas Historic Landmark, or certified as a contributing element to a local district pursuant to 36 CFR §67.9, the preliminary determination does not become final, and the owner will not be eligible for the credit. The Commission shall not issue a certificate of eligibility until or unless the designation is final.

(f) Determination of contributing structures in existing historic districts. If a property is located in a district listed in the National Register of Historic Places or in a certified local district, an Applicant or an Owner of the property shall request that the Commission determine whether the property is of historic significance contributing to the district by submitting Part A of the application. The Commission evaluates properties located within historic districts listed in the National Register of Historic Places or certified local districts to determine whether they contribute to the historic significance of the district by applying the following standards:

(1) A property contributing to the historic significance of a district is one which by location, design, setting, materials, workman-

ship, feeling, and association adds to the district's sense of time and place and historical development.

(2) A property does not contribute to the historic significance of a district if it does not add to the district's sense of time and place and historical development, or if its location, design, setting, materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Generally, buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old at the date of application.

(4) Certification of significance will be made on the basis of the appearance and condition of the property before beginning the rehabilitation work.

(5) If a nonhistoric surface material obscures a building's façade, it may be necessary for the owner to remove a portion of the surface material so that a determination of significance can be made. After the material has been removed, if the obscured façade has retained substantial historic integrity and the property otherwise contributes to the significance of the historic district, it will be considered eligible to be a certified historic structure.

(g) Subsequent Designation. A building must be a certified historic structure prior to the issuance of the certificate of eligibility by the Commission as required by §172.105 [471.904](b)(1)(A) of the Texas Tax Code. If a property is not automatically qualified as a certified historic structure, an owner of a property shall request that the Commission determine whether the property is of historic significance by submitting Part A of the application in accordance with subsections (e) and (f) of this section. Upon listing in the National Register of Historic Places, designation as a Recorded Texas Historic Landmark, or certification as a contributing element to a local district pursuant to 36 CFR §67.9, Commission staff overseeing the National Register program and the Official Texas Historical Marker program (as applicable), shall prepare a notification, to be filed with the tax credit application, indicating that the designation process required by Part A has been fulfilled.

(h) Multiple buildings. If a property owned by one entity contains more than one building and the Commission determines that the buildings have been functionally related historically, per §13.1(17) of this title (relating to Definitions), to serve an overall purpose (such as a residence and a carriage house), then the functionally related buildings will be treated as a single certified historic structure, regardless of whether one of the buildings is separately listed in the National Register of Historic Places or as a Recorded Texas Historic Landmark or is located within a historic district. Buildings owned by the same applicant that were not functionally related historically must be submitted as individual buildings on separate applications.

(i) Portions of buildings. Portions of buildings, such as single condominium apartment units, are not independently eligible for certification as an individual space without assessment of any work undertaken elsewhere in the building within the last 24 months, as described in §13.6(f) of this title (relating to Application Review Process). This rule applies even when a building has multiple owners. A full description of all work at the building must be provided with the application.

(j) Relocation of historic buildings. Relocation of a historic building from its original site may disqualify the building from eligibility or result in removal of designation as a certified historic structure. Applications involving buildings that have been moved or are to

be moved will be evaluated on a case-by-case basis under the applicable criteria for designation as provided in this section. For a building listed in the National Register of Historic Places, the applicant will be responsible for updating the National Register of Historic Places nomination for the property or district, or the relocated building will not be considered a certified historic structure for the purpose of this credit. For a building designated as a Recorded Texas Historic Landmark, the applicant will be responsible for notifying the Commission and otherwise complying with the requirements of §21.11 of this title (relating to Review of Work on Recorded Texas Historic Landmarks) prior to undertaking any relocation.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-6100



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL

##### SUBCHAPTER AA. TEACHER APPRAISAL

###### 19 TAC §150.1002, §150.1004

The Texas Education Agency (TEA) proposes amendments to §150.1002 and §150.1004, concerning teacher appraisal. The proposed amendments would allow districts to begin using the Alternate Domain I rubric as part of the Texas Teacher Evaluation and Support System (T-TESS) beginning with the 2024-2025 school year.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 150.1002 defines the requirements a school district must meet each school year regarding the assessment of teacher performance. Section 150.1004 defines the requirements for a teachers' response and appeal to a written observation summary or any other written documentation related to appraisal ratings.

The proposed amendment to §150.1002 would add language that allows districts to use the Alternate Domain I rubric as part of the T-TESS beginning with the 2024-2025 school year. The proposed amendment to §150.1004 would add language that allows teachers to respond or appeal written documentation for Alternate Domain I ratings.

The Alternate Domain I rubric was developed to address the shift in teacher responsibilities from lesson planning to lesson internalization. The proposed changes would allow districts to use either the current Domain I rubric or the Alternate Domain I rubric to assess teacher performance.

**FISCAL IMPACT:** Andrew Hodge, associate commissioner for system innovation, 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 existing regulations by allowing districts to begin using the Alternate Domain I rubric as part of the T-TESS beginning with the 2024-2025 school year and allowing teachers to respond to or appeal written documentation for Alternate Domain I ratings.

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:** Mr. Hodge 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 allowing districts to begin using the Alternate Domain I rubric as part of the T-TESS beginning with the 2024-2025 school year. 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 August 11, 2023, and ends September 11, 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 August 11, 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 amendments are proposed under Texas Education Code (TEC), §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §21.351.

*§150.1002. Assessment of Teacher Performance.*

(a) Each teacher shall be appraised on the following domains and dimensions of the Texas Teacher Evaluation and Support System (T-TESS) rubric that is aligned to the Texas Teacher Standards in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards).

(1) Domain I. Planning or Alternate Domain I. Lesson Internalization, which includes the following dimensions:

- (A) standards and alignment;
- (B) data and assessment;
- (C) knowledge of students; and
- (D) activities.

(2) Domain II. Instruction, which includes the following dimensions:

- (A) achieving expectations;
- (B) content knowledge and expertise;
- (C) communication;
- (D) differentiation; and
- (E) monitor and adjust.

(3) Domain III. Learning Environment, which includes the following dimensions:

- (A) classroom environment, routines, and procedures;
- (B) managing student behavior; and
- (C) classroom culture.

(4) Domain IV. Professional Practices and Responsibilities, which includes the following dimensions:

- (A) professional demeanor and ethics;
- (B) goal setting;
- (C) professional development; and
- (D) school community involvement.

(b) The evaluation of each of the dimensions identified in subsection (a) of this section shall consider all data generated in the appraisal process. The data for the appraisal of each dimension shall be gathered from pre-conferences, observations, post-conferences, end-of-year conferences, the Goal-Setting and Professional Development Plan process, and other documented sources.

(c) Each teacher shall be evaluated on the 16 dimensions in Domain I or Alternate Domain I and Domains II-IV [~~Domains I-IV~~] identified in subsection (a) of this section using the following categories:

- (1) distinguished;
- (2) accomplished;
- (3) proficient;
- (4) developing; and

(5) improvement needed.

(d) Beginning with the 2017-2018 school year, each teacher appraisal shall include the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions).

(e) Beginning with the 2024-2025 school year, teachers may be appraised using Domain I or Alternate Domain I based on the alignment of teacher responsibilities to lesson planning or lesson internalization.

(f) [(e)] If calculating a single overall summative appraisal score for teachers, the performance of teachers' students, as defined in §150.1001(f)(2) of this title, shall count for at least 20% of a teacher's summative score.

(g) [(f)] Each teacher shall be evaluated on the performance of teachers' students using one of the terms from the following categories:

- (1) distinguished or well above expectations;
- (2) accomplished or above expectations;
- (3) proficient or at expectations;
- (4) developing or below expectations; or
- (5) improvement needed or well below expectations.

*§150.1004. Teacher Response and Appeals.*

(a) A teacher may submit a written response or rebuttal at the following times:

(1) for Domain I or Alternate Domain I, Domain II, and Domain III [~~Domains I, II, and III~~], as identified in §150.1002(a) of this title (relating to Assessment of Teacher Performance), after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions, after receiving a written summative annual appraisal report.

(b) Any written response or rebuttal must be submitted within 10 working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domain I or Alternate Domain I, Domain II, and Domain III [~~Domains I, II, and III~~], as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

(c) A teacher may request a second appraisal by another certified appraiser at the following times:

(1) for Domain I or Alternate Domain I, Domain II, and Domain III [~~Domains I, II, and III~~], as identified in §150.1002(a) of this title, after receiving a written observation summary with which the teacher disagrees; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title, after receiving a written summative annual appraisal report with which the teacher disagrees.

(d) The second appraisal must be requested within 10 working days of receiving a written observation summary or a written summative annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written sum-

mative annual appraisal report for the ratings of dimensions in Domain I or Alternate Domain I, Domain II, and Domain III [~~Domains I, II, and III~~], as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

(e) A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

(f) The second appraiser shall make observations and walk-throughs as necessary to evaluate the dimensions in Domain I or Alternate Domain I, Domain II, and Domain III [~~Domains I-III~~] or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities, when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

(g) Each school district shall adopt written procedures for determining the selection of second appraisers. These procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

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 July 31, 2023.

TRD-202302702

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: September 10, 2023

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



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER BB. BATTERY SALES FEE

###### 34 TAC §3.711

The Comptroller of Public Accounts proposes amendments to rule §3.711, concerning battery sales fee collection and reporting requirements. The comptroller amends this section to implement Senate Bill 477, 87th Legislature, 2021, which requires marketplace providers to collect the applicable fees related to the sale of lead-acid batteries and to improve readability throughout the section.

The comptroller amends subsection (a) to add paragraphs (3), (4) and (5) to define the terms "marketplace," "marketplace provider," and "marketplace seller," respectively, as those terms are defined in Tax Code, §151.0242(a) but limits the terms to the sale of lead-acid batteries. The comptroller renumbers the subsequent paragraph.

The comptroller amends the title of subsection (b) to reflect that the subsection applies to the collection of the battery sales fee and not the remittance of the fee, which is addressed in subsection (e). The comptroller amends paragraph (1) by adding that, effective July 1, 2022, marketplace providers selling lead-acid

batteries are required to collect the battery sales fee. The comptroller also amends paragraph (1) to require the collection of the battery sales fee only on the sale of batteries not for resale, as required under Health and Safety Code, §361.138. The comptroller reorganizes the fee information from paragraph (1) into subparagraphs (A), (B) and (C). The comptroller amends paragraph (2) to add marketplace provider to the provision that allows the comptroller to collect the fee directly from the purchaser in instances where a dealer fails to collect the fee. The comptroller amends paragraph (5) to prohibit a marketplace provider from advertising that a refund is available for any portion of the fee.

The comptroller adds the term marketplace provider to the provisions in subsection (c) (1) and (2), and in subsection (d) to require marketplace providers to follow the same reporting requirements that dealers must follow.

The comptroller amends subsection (e) regarding the remittance of the fee to remove the term "person" and instead use the term "dealer or marketplace provider" in paragraph (1) and to add the term "marketplace provider" in paragraph (2).

The comptroller amends subsection (f) to allow a "marketplace provider" who collects the battery sales fee to retain the applicable discount on each fee collected.

The comptroller amends subsection (g) to remove the term "person" and include the terms "dealer" and "marketplace provider" to allow the comptroller or an authorized representative to inspect the records or equipment of a dealer or marketplace provider.

The comptroller amends subsection (h)(7) to apply the battery sales fee exemptions to certain sales made by a marketplace provider.

The comptroller amends subsection (j) to remove the term "person" and instead use the terms "dealer" and "marketplace provider" to assess the applicable penalties to both for failure to file a battery sales fee report in a timely manner.

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. 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](mailto: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) and

§111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments to this section implement Health & Safety Code, §361.138 (Fee on the sale of batteries).

§3.711. *Battery Sales Fee Collection and Reporting Requirements.*

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

(1) Dealer--A wholesaler, retailer, or any other person who sells or offers to sell lead-acid batteries.

(2) Lead-acid battery--Any battery, new or used, which contains lead and sulfuric acid, in liquid or gel form.

(3) Marketplace--A physical or electronic medium through which persons other than the owner or operator of the medium make sales of lead-acid batteries. The term includes a store, Internet website, software application, or catalog.

(4) Marketplace provider--A person who owns or operates a marketplace and directly or indirectly processes sales of or payments for lead-acid batteries for marketplace sellers.

(5) Marketplace seller--A seller, other than the marketplace provider, who makes a sale of a lead-acid battery through a marketplace.

(6) [(3)] Sale for resale--A sale of a lead-acid battery to a purchaser for the purpose of reselling the battery in the normal course of business in the form or condition in which it is acquired (i.e., as a separate item). A sale of a battery that is attached to or becomes an integral part of a vehicle, boat, or other equipment that is being sold, rented, or leased is not a sale for resale. The battery sales fee is due on the sale prior to the battery becoming a part of this equipment.

(b) Collection [and remittance] of the fee.

(1) Except as provided in subsection (h) of this section, a dealer, and effective July 1, 2022, a marketplace provider, must collect the fee on each sale of a lead-acid battery that is not for resale.

(A) For each lead-acid battery with a capacity of less than 12 volts, the fee is \$2.00.

(B) For each lead-acid battery with a capacity of 12 or more volts, the fee is \$3.00.

(C) A fee shall not be charged, collected, or allowed as an offset on a battery taken as a trade-in.

(2) If a dealer or a marketplace provider fails to collect the fee required in paragraph (1) of this subsection, the comptroller may collect the fee from the purchaser.

(3) The fee is not due on the sale of a vehicle, boat, or other equipment that has a battery as an integral part of it.

(4) The amount of the fee due must be separately stated on the invoice, bill, or contract to the customer and shall be identified as the Texas battery sales fee.

(5) A dealer or a marketplace provider may not advertise, make public, indicate, or imply that the dealer or marketplace provider will absorb, assume, or refund any portion of the fee.

(c) Due date and reporting requirements.

(1) Monthly filing. The battery sales fee is due and payable on or before the 20th day of the month following the end of each calendar month. Returns must be filed on a monthly basis unless a dealer or a marketplace provider qualifies as a quarterly filer under paragraph (2) of this subsection.

(2) Quarterly filing. A dealer or a marketplace provider who owes an average, as computed for the year, of less than \$50 for a calendar month or less than \$150 for a calendar quarter is required to file a return and remit the collected fees on or before the 20th day of the month following the end of the calendar quarter. The comptroller will notify a dealer or marketplace provider when the report and payment may be submitted quarterly.

(d) Report forms. The battery sales fee is to be reported on the Texas battery sales fee report form as prescribed by the comptroller. The fact that the dealer or a marketplace provider does not receive the form or does not receive the correct form from the comptroller for the filing of the return does not relieve the dealer or marketplace provider of the responsibility of filing a return and remitting the fee.

(e) Remittance of the fee.

(1) On or before the 20th day of the month following each reporting period, every dealer or marketplace provider [person] required to collect the fee shall file a consolidated return for all businesses operating under the same taxpayer number and remit the total fee due.

(2) The returns must be signed by the dealer or marketplace provider required to file the return or by the dealer's or marketplace provider's duly authorized agent.

(f) Discount. A dealer or marketplace provider who is required to collect the battery sales fee may retain \$.025 from each fee collected [sale made].

(g) Records required.

(1) Invoices or other records must be kept for at least four years after the date on which the invoices or records are prepared.

(2) The comptroller or an authorized representative has the right to examine any records or equipment of any dealer or marketplace provider [person] liable for the fee [in order] to verify the accuracy of any return made or to determine the fee liability in the event no return is filed.

(h) Exemptions.

(1) Sales for resale are not subject to the fee.

(2) The sale of a battery that under the sales contract is shipped to a point outside Texas is not subject to the fee imposed by this section if the shipment is made by the seller by means of:

(A) the facilities of the seller;

(B) delivery by the seller to a carrier for shipment to a consignee at a point outside this state; or

(C) delivery by the seller to a forwarding agent for shipment to a location in another state of the United States or its territories or possessions.

(3) Exports beyond the territorial limits of the United States are not subject to the fee. Proof of export may be shown only by:

(A) a copy of a bill of lading issued by a licensed and certificated carrier showing the seller as consignor, the buyer or purchaser as consignee, and a delivery point outside the territorial limits of the United States;

(B) documentation provided by a licensed United States customs broker certifying that delivery was made to a point outside the territorial limits of the United States;

(C) formal entry documents from the country of destination showing that the battery was imported into a country other than the United States. For the country of Mexico, the formal entry document is the pedimento de importaciones document with a computerized, certified number issued by Mexican customs officials;

(D) a copy of the original airway, ocean, or railroad bill of lading issued by a licensed and certificated carrier which describes the items being exported and a copy of the freight forwarder's receipt if the freight forwarder takes possession of the property in Texas; or

(E) a purchaser's blanket maquiladora exemption certificate and a copy of the purchaser's maquiladora export permit provided to the seller as required under §3.358 of this title (relating to Maquiladoras).

(4) There is no exemption provided for any organization or governmental agency, except as provided in paragraph (5) of this subsection.

(5) The United States, its instrumentalities, and agencies are exempted from the battery sales fee.

(6) Sales for disposal or reclamation are not subject to the fee.

(7) The battery sales fee does not apply to a sale of a battery made by a dealer or a marketplace provider when it meets all of the following criteria:

(A) the ampere-hour rating of the battery is less than 10 ampere-hours;

(B) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(C) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(i) Replacements covered by a warranty or service contract.

(1) The replacement of a battery under a manufacturer's warranty, without an additional charge to the purchaser, is not the sale of a battery to the purchaser. This replacement, therefore, is not subject to the fee. If there is a charge to the customer for the replacement (such as a pro rata warranty adjustment), then the customer must pay the battery sales fee.

(2) The replacement of a battery under an extended warranty or a service contract, for which the customer pays an extra charge, depends on the terms of the contract.

(A) If the replacement is free of charge to the customer, the dealer is responsible for paying the fee.

(B) If there is a charge to the customer for the replacement, the customer must pay the fee.

(j) Penalty. A dealer or marketplace provider [person] who does not file a report as provided by this section, or who possesses a fee collected or payable under this section and does not timely remit the fee to the comptroller, shall pay a penalty of 5.0% of the amount of the fee due and payable. If the dealer or marketplace provider [person] does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the dealer or marketplace provider [person] shall pay a penalty of an additional 5.0% of the amount of the fee due and payable.

(k) Interest. Interest accrues on the unpaid fee due beginning 60 days after the due date and ends the day on which the fee is paid.

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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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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



## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

#### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

##### 34 TAC §41.53

The Teacher Retirement System of Texas (TRS) proposes new §41.53, relating to Special Transitional Plan, under Subchapter C (relating to Texas School Employees Group Health (TRS-ActiveCare)) under Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

##### BACKGROUND AND PURPOSE

TRS-ActiveCare's primary health plan operates on a plan year that begins on September 1 and ends on the following August 31. In order to elect to participate in that plan, a participating entity must provide notice by December 31 of the year immediately preceding the next September 1 as of which it intends to enter the plan. See Insurance Code §1579.155 and corresponding TRS Rule 41.30. This creates difficulties for eligible participating entities to transition into TRS-ActiveCare when those entities currently offer a health plan that operates on a plan year that is different. Such entities may find it difficult or too costly to terminate their own plans in the middle of their plan year to transition into TRS-ActiveCare.

Proposed new §41.53, relating to Special Transitional Plan, exercises the Board's authority to create new plans under TRS-ActiveCare by creating a "Special Transitional Plan" that will provide an option to facilitate these entities' transition into TRS-ActiveCare. It will also allow such participating entities to provide notice by December 31 to enter TRS-ActiveCare's traditional plan as of the following September 1. In the interim, the participating entity will participate in the Special Transitional Plan.

##### FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed new rule.

## PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the new rule will be to allow participating entities that would have otherwise found it difficult or impossible to transition to TRS-ActiveCare to potentially realize substantial savings on their employee health care costs by providing a transitional avenue to enter TRS-ActiveCare. Mr. Green has also determined that there is no probable economic cost to entities or persons who may take advantage of the proposed new rule.

## ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

## LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

## GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule is in effect, the proposed new rule will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; 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 affect the state's economy.

This proposal creates a new regulation. Proposed §41.53 is a new rule through which TRS, as trustee of the Texas School Employees Uniform Group Health Coverage Program created under Chapter 1579 of the Insurance Code, will establish a new plan of group coverage under Section 1579.101.

## TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed new rule. Therefore, a takings impact assessment is not required under Government Code §2007.043.

## COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because it does not impose a cost on regulated persons.

## COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register*.

## STATUTORY AUTHORITY

This new §41.53 is proposed under the authority of Chapter 1579, Insurance Code, which establishes the Texas School Employees Uniform Group Health Coverage (TRS-ActiveCare);

Insurance Code §1579.052, which allows the trustee to adopt rules relating to, and to administer, TRS-ActiveCare as considered necessary by the trustee and to take the actions it considers necessary to devise, implement, and administer TRS-ActiveCare; Insurance Code §1579.101, which allows the trustee by rule to establish plans of group coverages for employees participating in TRS-ActiveCare and their dependents; Chapter 825, Texas Government Code, which governs the administration of TRS; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

## CROSS-REFERENCE TO STATUTE

The proposed new rule affects Insurance Code §1579.155, concerning Program Participation: Election.

### §41.53. Special Transitional Plan.

(a) Special Transitional Plan. In order to transition an entity into the TRS-ActiveCare plan year, TRS may establish a short duration Special Transitional Plan for an otherwise eligible entity that has an existing group health plan year that does not terminate the day preceding the beginning of the regular TRS-ActiveCare plan year. The purpose of the Special Transitional Plan is to assist an entity to transition into the TRS-ActiveCare plan year by covering the gap period between the end of the entity's existing coverage and the beginning of the regular TRS-ActiveCare plan year coverage.

(b) Notice of election and required information. An entity applying to a Special Transitional Plan ("applicant entity") must:

(1) Submit to TRS the information required under §41.45 of this title (relating to Required Information from School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers Electing to Participate in TRS-ActiveCare) at least 180 days in advance of the first day of the month in which the Special Transitional Plan is to be effective; and

(2) Submit an application to the Special Transitional Plan and a notice of election to participate in the regular TRS-ActiveCare plan under §41.30 of this title (relating to Participation in the Health Benefits Program under the Texas School Employees Uniform Group Health Coverage Act by School Districts, Other Educational Districts, Charter Schools, and Regional Education Service Centers) at the same time. Such application and election to participate must be submitted no later than 90 days in advance of the first day of the month in which the Special Transitional Plan is to be effective and never later than December 31 of the year before the plan year in which the election to participate in TRS-ActiveCare is to be made effective.

(c) Manner, form, and effect of election.

(1) Application for the Special Transitional Plan. All applications for a Special Transitional Plan under this section shall be in writing, in a form prescribed by TRS.

(2) Incomplete or untimely applications. An incomplete or untimely filed application to a Special Transitional Plan will be denied.

(3) Duration. A Special Transitional Plan issued by TRS under this section shall have a duration of less than a year, shall begin on the TRS approved date, and shall end on the day before the regular TRS-ActiveCare plan year begins.

(d) Coverage. The Special Transitional Plan shall have the same benefits and coverage as one or more of the TRS-ActiveCare plan options being offered to similar participating entities in the applicant entity's region on the day that the applicant entity begins the Special Transitional Plan, except for any fully insured HMO plan options. Such terms shall include those of §41.33 of this title (relating to

Definitions Applicable to the Texas School Employees Uniform Group Health Coverage Program) through §41.40 of this title (relating to Coverage Continuation While on Leave Without Pay), except as modified by TRS to adjust them to the limited-time nature and effective dates of the Special Transitional Plan.

(e) Eligibility. Individuals shall be eligible for the Special Transitional Plan under the same eligibility requirements as the TRS-ActiveCare Plan, as described in §41.34 of this title (relating to Eligibility for Coverage under the Texas School Employees Uniform Group Health Coverage Program).

(f) Rates and Premiums. The Special Transitional Plan may have rates that differ from the rates that apply to other similar entities participating in the TRS-ActiveCare Plan in the applicant entity's region. The applicant entity shall pay its premiums for the Special Transitional Plan in the same way that participating entities pay the premiums for the TRS-ActiveCare Plan under §41.41 of this title (relating to Premium Payments) and be subject to the same corrective actions.

(g) Enrollment periods. The applicant entity must participate in two different open enrollments after the date of their application: one enrollment period for the Special Transitional Plan, which will begin at least 31 days prior to the beginning of the Special Transitional Plan; and another enrollment period for the regular TRS-ActiveCare Plan, in accordance with §41.36 of this title (relating to Enrollment Periods for TRS-ActiveCare).

(h) Appeals. The appeals processes for claims, benefits, and eligibility under the Special Transitional Plan shall be the same as those that apply to the regular TRS-ActiveCare Plan.

(i) Expulsion. The Special Transitional Plan shall follow the same expulsion process as the regular TRS-ActiveCare Plan, as described in §41.52 of this title (relating to Expulsion from TRS-ActiveCare).

(j) Responsibility for notices, disclosures, and administrative adjustments. It is the applicant entity's responsibility to give to its employees, eligible dependents, agents, contractors, and administrators all necessary notices and disclosures about any short-term and long-term implications of joining TRS-ActiveCare on a different date than the applicant entity's plan year through the Special Transitional Plan, and to conduct any necessary administrative adjustments.

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 July 28, 2023.

TRD-202302696

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Earliest possible date of adoption: September 10, 2023

For further information, please call: (512) 542-3528



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

## **CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION**

### **37 TAC §146.6, §146.8**

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 146, Revocation of Parole or Mandatory Supervision. The amendments are proposed to reflect the changes made by the 88th Legislature in SB 374 to Government Code, Section 508.282(a), regarding the time for the parole panel, board designee, or department to dispose of the charges against an inmate or person described by Government Code, Section 508.281(a), and to also provide edits for uniformity and consistency throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the parole process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed. The amendments 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; does not create a new regulation; does not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to [bettie.wells@tdcj.texas.gov](mailto:bettie.wells@tdcj.texas.gov). Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are adopted under Texas Government Code Sections 508.036(b), 508.0441(a)(5), 508.045(c), 508.281, 508.2811, and 508.283. Section 508.036(b) requires the board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441(a)(5) vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045(c) provides parole panels with the authority to conduct parole revocation and mandatory supervision revocation hearings; and to grant, deny, revoke parole or mandatory supervision. Sections 508.281 and 508.2811 relate to hearings to determine violations of the releasee's parole or mandatory supervision. Sections 508.282 and 508.283 concern deadlines and sanctions for parole revocation and mandatory supervision revocation hearings.

No other statutes, articles, or codes are affected by these amendments.

§146.6. *Scheduling of Preliminary Hearing.*

(a) Upon request, the Board or the Board's scheduling staff shall schedule a preliminary hearing unless:

(1) more than fourteen calendar days have elapsed from the time the warrant is executed; or

(2) information has not been presented to the Board or the Board's scheduling staff that the releasee was served with the following:

(A) notice of the right to a preliminary hearing and that its purpose is to determine whether there is probable cause or reasonable belief to believe the releasee has committed a parole violation;

(B) written notice of the allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that the case will be heard by a parole panel or designee of the Board;

(G) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board will in all probability revoke; and

(H) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) For the purposes of subsection (a)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the [44] 91st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Article 32.02, Code of Criminal Procedure.

(c) If the Board or the Board's scheduling staff receives a request for a preliminary hearing later than the fourteenth calendar day following the provisions described in subsection (a)(1) of this section, the Board or the Board's scheduling staff shall require the requestor to provide an explanation of the delay.

(d) Subsection (a)(1) of this section does not apply when a releasee is:

(1) transferred under Section 508.284, Government Code to a correctional facility operated by or under contract with the TDCJ [department]; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

(e) In cases under subsection (d) of this section, a preliminary hearing shall be held within a reasonable time.

§146.8. *Scheduling of Revocation Hearings.*

(a) Upon request, the Board or the Board's scheduling staff shall schedule a revocation hearing unless information has not been

presented to the Board or the Board's scheduling staff that the releasee was served with the following:

(1) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(2) written notice of the allegations of parole violation against the releasee;

(3) notice of the right to full disclosure of the evidence against the releasee;

(4) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(5) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer specifically finds good cause for not allowing confrontation of the witness;

(6) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(7) notice that the case will be heard by a parole panel or designee of the Board;

(8) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board will in all probability revoke; and

(9) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(b) If the releasee is not entitled to a preliminary hearing and requests a revocation hearing, the Board or the Board's scheduling staff shall schedule a revocation hearing unless:

(1) more than fourteen calendar days have elapsed from the time that the warrant is executed; or

(2) information has not been presented to the Board or the Board's scheduling staff that the releasee was served with the following:

(A) notice of the right to a revocation hearing and that its purpose is to make a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation of parole;

(B) written notice of the claimed allegations of parole violation against the releasee;

(C) notice of the right to full disclosure of the evidence;

(D) notice that releasee has the opportunity to be heard in person and to present witnesses and documentary evidence;

(E) notice that the releasee has the right to confront and cross-examine adverse witnesses unless the Hearing Officer specifically finds good cause for not allowing confrontation of the witness;

(F) notice that releasee has an opportunity to be heard and to show that he did not violate the conditions, or if the releasee did, that circumstances in mitigation suggest that the violation does not warrant revocation;

(G) notice that the case will be heard by a parole panel or designee of the Board;

(H) notice that the releasee has the opportunity to waive in writing the right to either or both of the preliminary and revocation hearings, with the additional understanding that, if the releasee waives the revocation hearing, the Board will in all probability revoke; and

(I) notice that the releasee has the right to retain an attorney and the conditional right to an appointed attorney.

(c) If the Board or the Board's scheduling staff receives a request for a revocation hearing later than the fourteenth calendar day following the provisions described in subsection (b)(1) of this section, the Board or the Board's scheduling staff shall require the requestor to provide an explanation of the delay.

(d) Subsection (b)(1) of this section does not apply when a releasee is:

(1) transferred under Section 508.284, Government Code to a correctional facility operated by or under contract with the department; or

(2) returned to custody from another state, a federal correctional institution, or a medical or psychiatric facility.

(e) For the purposes of subsection (b)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory super-

vision and is not charged before the [41] 91st day with the commission of an offense; or

(2) the sheriff having custody of the releasee notifies the division that the releasee has discharged the sentence or that the prosecutor has dismissed the charge under Article 32.02, Code of Criminal Procedure.

(f) In cases under subsection (d) of this section, a revocation hearing shall be held within a reasonable time.

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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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5478

